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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

New York, N.Y.

4 v.

23 Cr. 307 (LJL)

5 BRUCE GARELICK,

6 Defendant.

7 -----x

Trial

8 May 8, 2024

9 9:03 a.m.

10 Before:

11 HON. LEWIS J. LIMAN,

12 District Judge
13 and a Jury

14 APPEARANCES

15 DAMIAN WILLIAMS

16 United States Attorney for the
Southern District of New York

17 BY: ELIZABETH A. HANFT

MATTHEW R. SHAHABIAN

18 DANIEL G. NESSIM

Assistant United States Attorneys

19 SHAPIRO ARATO BACH, LLP

20 Attorney for Defendant Garelick

21 BY: ALEXANDRA A. E. SHAPIRO

JONATHAN BACH

JULIAN S. BROD

22 JASON A. DRISCOLL

23 Also Present:

24 Special Agent Marc Troiano, FBI

Paralegal Specialist Grant Bianco, USAO

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1 (Trial resumed; jury not present)

2 THE COURT: Anything from the government before we
3 bring in the jury?

4 MR. SHAHABIAN: No, your Honor.

5 THE COURT: How about from the defense?

6 MR. BACH: No. Thank you, your Honor.

7 THE COURT: How long does the government expect for
8 its summation?

9 MR. SHAHABIAN: Approximately 90 minutes, your Honor.

10 THE COURT: And the defense?

11 MR. BACH: Approximately the same time, probably less.

12 THE COURT: Let's bring in the jury.

13 MR. SHAHABIAN: Your Honor, permission to publish the
14 first slide so we're ready to go.

15 MR. BACH: No objection.

16 (Continued on next page)

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Summation - Mr. Shahabian

1 (Jury present)

2 THE COURT: Welcome back, members of the jury. I hope
3 you all had a pleasant evening. We'll now hear summations. It
4 is our tradition that the government goes first and then you'll
5 hear from the defense, and then the government will have an
6 opportunity to give a reply summation.

7 The government may proceed with its summation.

8 MR. SHAHABIAN: Thank you, your Honor.

9 THE COURT: Mr. Shahabian.

10 MR. SHAHABIAN: Members of the jury, Bruce Garelick
11 cheated. In 2021, he knew valuable inside information. He
12 knew that DWAC, a blank check company, was targeting a merger
13 with President Donald Trump's social media company Trump Media.
14 He knew in June 2021 that DWAC's CEO had already been involved
15 in secret exclusive negotiations with Trump himself. After he
16 joined the board of directors of DWAC, he knew these secret
17 negotiations were advancing, and fast. He knew that when a
18 merger between DWAC and Trump Media was announced, it would be
19 an earthquake in the markets. DWAC's stock price would
20 skyrocket. This was inside information. It was confidential.
21 The defendant had a duty to keep that information confidential,
22 secret. He had a duty as a director to put DWAC's and its
23 shareholders' interests ahead of his own, a duty not to use
24 what he had learned for his personal gain, but that is exactly
25 what he did.

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Summation - Mr. Shahabian

1 After learning about the Trump SPAC, the defendant and
2 his boss agreed on a plan. They would buy millions of warrants
3 on the open market and sell when the news broke and make a ton
4 of money. The defendant was their eyes, ears, and mouth on the
5 DWAC board. He updated his boss on the merger negotiations and
6 he used his board seat to push for the Trump Media merger.

7 When the DWAC merger was announced, the defendant and
8 his boss sold all their open market shares. They made over
9 \$18 million, \$18 million. The people they told in advance made
10 millions more. The defendant betrayed the trust of DWAC and
11 its shareholders. He committed insider trading. He cheated,
12 plain and simple.

13 When the defendant bought his DWAC shares, when he
14 tipped his boss and others and told them to buy DWAC
15 securities, he had an illegal advantage, an advantage that
16 ordinary investors did not have. When he bought those shares,
17 when he tipped others, he broke the law. It's time to hold him
18 accountable.

19 Over the past week and a half, you've seen and heard
20 all the evidence in this case as it came in piece by piece.
21 This closing statement is our opportunity to pull all that
22 evidence together and explain how it proves beyond a reasonable
23 doubt that the defendant is guilty as charged.

24 Now, members of the jury, Judge Liman's going to give
25 you detailed instructions on the law. I'm not going to do

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Summation - Mr. Shahabian

1 that. I'm going to summarize what I expect Judge Liman is
2 going to tell you. If there's a difference between what I say
3 and what you hear Judge Liman say, follow his instructions on
4 the law.

5 The defendant is charged with several counts of
6 insider trading, but at the end of the day, the charges boil
7 down to five questions that you need to decide. First, did the
8 defendant have material nonpublic information? Second, did he
9 use that information to trade in DWAC securities? Third, did
10 he tip others? Fourth, did he violate his duties to DWAC and
11 its shareholders? Fifth, did he know what he was doing was
12 wrong? The answer to all of these questions is "yes." What
13 I'm going to do this morning is walk through how the evidence
14 shows that for each of these questions, we've proven that
15 answer to you beyond a reasonable doubt.

16 Before I do that, I want to talk about one thing.
17 Look, members of the jury, the defendant testified. At all
18 times, the burden of proof remains on the government. We have
19 to prove his guilt beyond a reasonable doubt. The defendant
20 did not have to present evidence, he did not have to testify,
21 it never shifts to him. But when the defendant chooses to take
22 the stand, when he chooses to give you an explanation, you sat
23 there, you listened to it, and you should scrutinize it
24 carefully, compare it to the evidence you heard in this case.
25 I submit to you that a lot of what the defendant told you the

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Summation - Mr. Shahabian

1 past couple of days was bogus, he lied to you repeatedly.

2 I'm going to talk about what the defendant said on the
3 stand, what I expect the defense will argue today at various
4 points through my summations. But when you ask yourself, did
5 the defendant know what he was doing was wrong, think about
6 what he tried to tell you on the stand these past couple of
7 days and whether it squares with the evidence. It doesn't
8 because he lied.

9 So let's start with the first question. Did the
10 defendant have material nonpublic information? Let's start
11 with whether it was nonpublic.

12 There isn't going to be a serious dispute about this,
13 I expect, members of the jury. DWAC's merger negotiations with
14 Trump Media were a secret until the public announcement on
15 October 20th. The fact that DWAC's CEO, Patrick Orlando, was
16 exploring a merger with Trump Media, even through his previous
17 SPAC, Benessere, that was a secret. The fact that Patrick
18 Orlando and Mr. Trump had signed a mutually exclusive letter of
19 intent, that was a secret. Remember, this is the letter of
20 intent that the defendant and the Shvartsman's were shown
21 during that June 2021 meeting to show that this was a serious
22 potential merger that Mr. Orlando had access to the president.

23 Now, I'm going to stop for a minute. You're not going
24 to get the slides up here on the screen back with you in the
25 jury room. I'm going to go through them slowly. If there are

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Summation - Mr. Shahabian

1 any exhibits that seem important to you, you can write down the
2 exhibit numbers. They'll either be on the exhibits or they'll
3 be in the bottom-right, and I'll try to call out the most
4 important ones as we go along.

5 You heard from Andrew Litinsky. He was the person
6 negotiating on behalf of Trump Media. He testified this letter
7 of intent between Benessere and Trump was confidential. The
8 negotiations between Patrick Orlando and Mr. Trump were
9 confidential.

10 That's also what Hartley Wasko told you. Remember, he
11 was one of the investors that the defendant brought into DWAC
12 to try to get him to invest in the founder shares. He said
13 when he sat in on that pitch in the summer, his understanding
14 was that DWAC, this company, had a plan to acquire Truth
15 Social - that's Trump Media - and that he had the opportunity
16 to invest in the founders round. That was the pitch. And he
17 understood that that was confidential information.

18 We saw this text chain. This is when they're trying
19 to find investors in the founders round. Patrick Orlando tells
20 his team, you can only share the SPAC target media group name -
21 that's Trump Media - if the person is under an NDA, if they
22 signed the confidentiality agreement. This is very secret
23 information. This is DWAC's advantage.

24 And the defendant knew it was a secret. This is
25 Government Exhibit 400. This is from the summer. He's telling

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Summation - Mr. Shahabian

1 Eric Hannelius that the DWAC prospectus -- remember, this is
2 one of those publicly filed SEC documents, that's publicly
3 available, but it doesn't say anything about Trump. It can't
4 yet because it's a secret. The defendant knew this was a
5 secret.

6 You heard from Michael D'Angelo. That was the person
7 from Saba Capital, the hedge fund. He explained their
8 portfolio strategy. They don't know who the targets of these
9 SPACs are, they're blank check companies, so as a strategy,
10 they just invest in all of them. It's a safe bet, they get
11 their \$10 back, and if one of them hits, they make a lot of
12 money, but they don't know who it's going to be when they
13 invest. He testified that when Saba invested in DWAC, they had
14 no idea who the potential targets were. They did not know that
15 Trump Media was one of those targets.

16 Ben Reed. That was the broker from E.F. Hutton who
17 placed the trades. He told you the same thing, we do a ton of
18 these SPACs, nobody knows who the targets were. When I placed
19 the orders, I didn't know. He said a lot of them don't do
20 anything. A decent amount don't even find an acquisition
21 target, they just fail. And so, he was surprised when the news
22 of Trump came out. The broker didn't know.

23 I don't know if the defense is seriously going to
24 contest that this was nonpublic information. But remember,
25 they tried to show you this Axios article that the defendant

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Summation - Mr. Shahabian

1 looked at in the summer of 2021. You can look at it, too.
2 It's Government Exhibit 1202. It talks about Trump Media,
3 talks about them looking for a SPAC, but what it doesn't say is
4 DWAC, it doesn't say Benessere, it doesn't say Patrick Orlando.
5 The fact that DWAC already was targeting Trump Media, that was
6 the secret. That's why they invested in DWAC. So this Axios
7 article is a distraction. Members of the jury, these
8 negotiations between Patrick Orlando and Trump Media, between
9 DWAC and Trump Media were secret until the announcement on
10 October 20th, 2021.

11 So now that we've talked about it being nonpublic,
12 let's talk about whether the information was material. You
13 heard a lot about whether it was material in this case. The
14 defendant told you several times he didn't think any of this
15 was material. It absolutely was.

16 I expect Judge Liman is going to give you some
17 detailed instructions on what materiality means. But what it
18 basically means is, was this important? Was it important to
19 deciding whether to invest in the stock?

20 Here's a portion of what I expect Judge Liman is going
21 to instruct you. Material information includes any fact,
22 which, viewed objectively, might affect the value of the
23 corporation's stock or other securities. Might affect, members
24 of the jury. You know this information might affect the value
25 of DWAC's stock. You saw the charts. These SPACs, these blank

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Summation - Mr. Shahabian

1 check companies, they trade at \$10 a share. That's the red
2 line on the bottom because they don't do anything until they
3 announce a merger target. There's no business, there's no
4 money coming in, they're just looking for an acquisition
5 target. That's the whole point.

6 Once the news broke, the price skyrocketed from \$10 to
7 \$52 the next day, to \$175 the day after that. This was huge
8 news. This was material. This was important to deciding
9 whether to invest in the stock. It's why Andrew Litinsky and
10 Peter Melley told you half a billion shares of DWAC traded
11 hands the day after the merger was announced. This was a
12 gigantic announcement.

13 Now, it wasn't just huge at the end when it was
14 actually announced to the public. This information that they
15 were negotiating that DWAC was targeting Trump Media was huge
16 news every step of the way. I'm going to summarize that
17 evidence. But you sat through this trial, members of the jury.
18 SPACs don't have any value besides the target company. That's
19 the point. This SPAC, DWAC, was targeting Trump Media, its top
20 target. It was about getting Trump from the beginning, and
21 DWAC's management already had an inside track to Trump from
22 their prior SPAC. That's what got people like the defendant
23 excited about the investment, that's how they structured their
24 investment on the potential that DWAC was going go to land
25 Trump, not that it was a guarantee, but that this could happen

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Summation - Mr. Shahabian

1 and this kind of stock price jump was going to happen. That's
2 material. That's important to deciding whether to invest. You
3 know from this trial nothing was going to make a bigger splash
4 than the Trump Media announcement. This wasn't two paper
5 companies merging. This is the former president's social media
6 company launching right after he lost the election. Of course
7 this is going to be huge. And you heard the defendant's words
8 from the board meeting on October 20th when they approved the
9 merger. Unlike any other social media startup he'd seen in his
10 life. The model is irrelevant. What matters is it's Trump.

11 Now, the defendant took the stand. He told you he
12 didn't think any of these negotiations were material until the
13 very end, that it was pie in the sky, that it was aspirational,
14 that there was no reality to it. It was only a few days before
15 when he heard they were close to a definitive agreement, that's
16 when he realized this might be material.

17 Members of the jury, come on. You know that the
18 defendant was defendant lying to you when he said that. You
19 know he was lying because the evidence shows that Trump was
20 important to his investment plan at every step of the way. It
21 started in that June 18th meeting. This is where the defendant
22 learned and the Shvartsman's learned that Patrick Orlando had
23 already negotiated an exclusive letter of intent to negotiate
24 with his prior SPAC and Trump Media, exclusive. Andrew
25 Litinsky told you these were serious merger negotiation

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Summation - Mr. Shahabian

1 discussions. He testified, at this point, the SPAC Benessere
2 would only be talking to one operating partner, that's Trump
3 Media. Trump Media at that point would be only talking to one
4 other SPAC, that's Benessere. The parties are seriously
5 interested, it's not a guarantee, but they're serious.

6 Patrick Orlando didn't say, I know Mr. Trump, I
7 visited Mar-a-Lago, we have a social relationship. What he
8 told defendant and Rocket One was we already got negotiations
9 underway, I already have a business relationship with him, I've
10 got an inside track. That was material. It was important.

11 And the defendant, when he testified, he tried to
12 downplay what he learned in this meeting, the importance of
13 what he heard. Here's what he said. He said, well, I didn't
14 see the document at the meeting, I wasn't really sure what he
15 had shown, but I had talked to my boss after, he said
16 Mr. Orlando had shared a photograph of himself with the former
17 president, and he also shared what my boss characterized as
18 some, you know, older prior business contract that Mr. Orlando
19 had with Trump. You know he was downplaying it because that's
20 not what he was saying at the time he learned this information.

21 This is an important exhibit, Government Exhibit 743.
22 This is June 30th after that meeting on June 18th when the
23 defendant is trying to build the syndicate, to bring investors
24 into DWAC. And what does he say? Look at the sentence
25 starting "it involves." This deal involves founder shares to a

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Summation - Mr. Shahabian

1 soon to IPO SPAC that has an exclusive with the soon to launch
2 Trump Media Group. The defendant understood how important it
3 was that Mr. Orlando had already negotiated an exclusive
4 contract with Trump Media.

5 Now look, that's not a guarantee the negotiations are
6 going to complete, there's never a guarantee until everything
7 is signed, but it's important. He explained that, no guarantee
8 the Trump deal happens, but the speculative upside is huge if
9 it does and the downside is protected. This was material
10 information. The defendant knew that and he used it to bring
11 other investors into the deal.

12 The defendant and his boss, Michael Shvartsman, this
13 was their plan to bring the syndicate in. The defendant called
14 it the Trump SPAC. This is one of his emails to Anton
15 Postolnikov. Anton, good times last night. Following up on
16 that Trump Media Group SPAC we mentioned. The important
17 takeaway from this meeting, the important thing to bring
18 investors in was the potential to get Trump Media. That's how
19 they pitched it.

20 Government Exhibit 742. This is the defendant texting
21 Anton Postolnikov. Hey, Anton. It's Bruce. Are you all set
22 on DWAC Trump SPAC? That's what the defendant thought DWAC
23 was, it was the Trump SPAC. That was the point, they were
24 trying to get Trump Media.

25 Here are other emails the defendant said to other

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Summation - Mr. Shahabian

1 potential investors in the syndicate. Eric Hannelius, Hartley
2 Wasko, others. In every one of these emails, how does he
3 describe the opportunity to invest in DWAC? It's the Trump
4 SPAC. That was the plan, it was important, it was material to
5 know that DWAC was targeting Trump Media.

6 Hartley Wasko understood that. He testified, I
7 participated in one of these calls, the defendant was there,
8 Patrick Orlando was there, and my understanding was that this
9 company, DWAC, had a plan to acquire Truth Social and we had
10 the opportunity to invest in it. That was the point. This was
11 important information.

12 This is the calendar invite for that meeting that
13 Hartley Wasko attended. The defendant was on the invite, he
14 sent it. Patrick Orlando, the Shvartsman's, Eric Hannelius,
15 Marc Wachter, Hartley Wasko, they're all there.

16 During the meeting, Wachter texts Patrick Orlando, I
17 would also mention that if Trump runs for president again, this
18 will likely be a huge boost to TMG. This is what they're
19 trying to sell. This is how they're bringing investors into
20 DWAC. We might get Trump, and if we do, it's going to be huge.
21 The defendant knew that.

22 The defendant lied to you, members of the jury, when
23 he took the stand and he said - you can go back through the
24 transcript if you need to - five times that there was no
25 reality to the possibility that a deal with Trump was going to

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Summation - Mr. Shahabian

1 happen. He called it, on the stand, a pie-in-the-sky fantasy,
2 aspirational, he paid it no mind, there was no reality to it.
3 Members of the jury, come on, that was a lie. This was the
4 point of the investment. That's why they were bringing a
5 syndicate together. It wasn't because there was no reality to
6 it, it was because this was important that they might get Trump
7 and they might make a lot of money.

8 Remember, materiality is any information that might
9 affect the value of the stock. This is that kind of
10 information. The defendant lied to you when he said there was
11 no reality to it because he had to, because if you believe that
12 this was material information, material nonpublic information,
13 then the defendant knew from the summer before any trades
14 happened that he was in possession of material nonpublic
15 information. That's why he lied over and over to you.

16 And you can see that in the emails. Government
17 Exhibit 412. After the meeting, the defendant emails Patrick
18 Orlando's team and he says in the second paragraph here,
19 Michael - that's Michael Shvartsman - and I the discussed with
20 Patrick Orlando the ROFR on future payment processing needs for
21 the Trump Media Group. Remember, the defendant explained,
22 Rocket One, they do payment processing, credit cards, things
23 like that.

24 When the defendant testified, he tried to say, oh,
25 they were just asking for an introduction to Mr. Trump, you

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Summation - Mr. Shahabian

1 know, Patrick Orlando knows him, maybe there's an opportunity
2 there. That's not what this is, members of the jury. This is
3 when this merger is complete and when DWAC is running Trump
4 Media. We want in, we want a right of first refusal – an
5 ROFR – on the payment processing needs, get us in the door.
6 That's what they're asking for. This isn't about we'd like to
7 meet Mr. Trump, this is the point of these business
8 negotiations. DWAC is going to target Trump Media and the
9 defendant and his company wanted an inside track for more
10 business.

11 Now, you heard a lot about how SPACs aren't supposed
12 to have targets until they go public – some of the SEC rules.
13 And so, we saw this response from Patrick Orlando. We really
14 like TMG. There's no guarantee. One of many companies. We've
15 had no substantive discussions with respect to DWAC because we
16 can't yet. And the defendant understood they weren't supposed
17 to say that DWAC had had any negotiations. And Andrew Litinsky
18 said, DWAC hadn't done negotiations yet, it was all Benessere
19 before the IPO. But he understood, after getting this email,
20 that he wasn't supposed to be so clear about the target. So he
21 said in response, for clarification purposes, your response
22 regarding a potential target I named in my prior email was my
23 own speculation regarding that potential target. Members of
24 the jury, it wasn't his own speculation, we saw that. Trump
25 was the discussion in these DWAC pitches. The defendant

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Summation - Mr. Shahabian

1 understood he had gone a little too far in his email.

2 And we know that because that was the plan. This is
3 one of the most important text messages in this case. This is
4 Government Exhibit 742. This is the Postolnikov text chain.
5 So we saw part of it earlier when the defendant asked Anton
6 Postolnikov, are you in on DWAC? Are you in on the Trump SPAC?
7 What did you decide to do?

8 A couple of days later, Mr. Postolnikov texts the
9 defendant, let's just hope the merger is with you know who,
10 otherwise won't get much traction. You know who they're
11 talking about, members of the jury, they're talking about Trump
12 Media. That's the "you know who."

13 And the defendant explains the plan here. It's not
14 about Black-Scholes or investing in SPACs or any of the
15 nonsense he tried to tell you on the stand. It's right here in
16 this text message. If the merger is not the plan A, we
17 exercise our redemption rights.

18 You heard about redemption rights in this trial.
19 Peter Melley explained them to you. If you own units or shares
20 in a SPAC and you don't like the target when they announce it,
21 you can get your money back, you can redeem your shares and get
22 the \$10 you put in back. That's what the defendant is saying.
23 The goal was to get Trump Media if they didn't like the target.
24 If it wasn't you know who, if it wasn't Trump, they would
25 redeem their shares. It was material to them that DWAC was

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Summation - Mr. Shahabian

1 targeting Trump.

2 The defendant testified, he explained these redemption
3 rights were important in their negotiations, that he and his
4 boss negotiated with Patrick Orlando even about the founder
5 shares, which didn't initially have redemption rights, they
6 agreed to pay an extra dollar so that they could get their
7 money back. He tried to cover himself at the end there. He
8 said, if you don't like the way that, you know, this goes down
9 the road, you know, post IPO, you get a little more protection.
10 You know what that means, members of the jury. If it wasn't
11 Trump, they could get their money back. That's why they were
12 negotiating for the redemption rights. That's how he pitched
13 to the investors in the syndicate.

14 We looked at this text, Government Exhibit 743. This
15 is where he says the SPACs already got an exclusive with Trump
16 Media, speculative upside is huge and the downside is
17 protected. That's the redemption rights. We're getting in
18 because they're targeting Trump, and if it's not Trump, we're
19 protected, we can redeem. This was material that Trump was the
20 target.

21 Here's another one, another potential investor,
22 Government Exhibit 723. June 30th, he texts the defendant and
23 Michael Shvartsman an article about the Trump organization
24 expected to be charged with crimes. He says, would they even
25 be able to take a company public right now? And the defendant

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Summation - Mr. Shahabian

1 acknowledges, there's risk, the SPAC, it might not happen.
2 They might not get Trump Media Group for a variety of reasons.
3 However, we have downside protection from the structure of the
4 investment. The redemption rights, the reason they invested,
5 the goal was to try to get Trump Media, if it wasn't Trump
6 Media, they could redeem. This was material who the target
7 was. It was important, it was how they were structuring their
8 investment strategy. Huge upside if it's Trump, if it's not,
9 you redeem.

10 Here's another version of that. This is Government
11 Exhibit 465. This is the email to Eric Hannelius on September
12 9th, 2021. The defendant says, if they don't announce a target
13 we like/expect. You know who the target they like/expect is,
14 it's Trump Media. If it's not Trump Media, we have the right
15 to demand our \$10 back, which we will do under this scenario.
16 He's saying the plan right here. It's not a Black-Scholes
17 model that you never saw any notes of, it's Trump Media or
18 we'll redeem.

19 It's the same reason in Government Exhibit 474. This
20 is October 16th, shortly before the merger announcement.
21 Remember, Eric Hannelius forwards the defendant an email. He
22 says, hey, they tell me I have to return some of my money back,
23 what do you think I should do? Should I take my money back or
24 should I roll it into Patrick Orlando's next SPAC? The
25 defendant doesn't say, well, SPACs are good investments

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Summation - Mr. Shahabian

1 generally and you should invest in all of them like Saba
2 Capital does. No, what he says is, get your money back. Their
3 next SPAC may or may not be interesting to us. If it is, we
4 can certainly get involved then. Members of the jury, you know
5 what makes the SPAC interesting to the defendant, the target.
6 If they know who the target is and they like it, then they'll
7 invest, if they don't, there's no reason to put up their money.
8 This is not a portfolio trading strategy like Saba Capital,
9 this is, we want the target, that's the reason we're investing,
10 it's Trump Media. It's material. That was the point.

11 It also just wasn't the target, it was their trading
12 strategy. Remember, you heard a lot about lockup during this
13 trial, that the founder shares had lockup rights. Here's the
14 defendant explaining it to Justin Friedberg. There's a catch
15 to those founder shares they were pitched in. You get in
16 cheap, but you're locked up for at least six months. And you
17 heard that from a lot of witnesses in this trial, like Hartley
18 Wasko and Marc Wachter and Eric Swider. They don't have shares
19 because they're still locked up. If you want to sell on the
20 news of the announcement, a lockup is not helpful.

21 And so, the defendant explained in Government Exhibit
22 745, this is a text message from the defendant to Michael
23 Shvartsman in August of 2021 right before the IPO, recall, we
24 downsized our founders class investment from 400,000 to
25 125,000. Recall, we are playing the IPO shares warrants as far

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Summation - Mr. Shahabian

1 more of a short-term trader. This was the strategy. They
2 didn't want to be locked up, they wanted to be able to sell on
3 the news. There's no reason to be a short-term trader and a
4 SPAC. You saw the charts, members of the jury. They're \$10
5 until there's an announcement. They're not doing anything.
6 The reason he's planning to be a short-term trader is he knows
7 this merger is going to happen fast, and when it does, they can
8 sell and they can make a lot of money. That was the strategy.
9 It was important, it was material to know that DWAC had an
10 inside track to Trump Media and that was the expected target.

11 You heard the defendant's explanation on the stand.
12 Well, it wasn't about Trump. Michael Shvartsman was just
13 interested in warrants generally. That's why I was looking at
14 public SEC filings about volatility and running a Black-Scholes
15 calculation. He admitted on cross examination there were no
16 notes that you saw in this case of a Black-Scholes investment,
17 of a Black-Scholes calculation, any reason other than Trump
18 Media for these investments. He lied to you because if he
19 admitted that the reason they bought shares, the reason they
20 invested was Trump Media, then he admitted to knowing he had
21 material nonpublic information in the summer. The reason they
22 were talking about warrants that summer wasn't because of any
23 Black-Scholes calculation, they wanted to avoid the lockup.
24 They wanted quick securities they could trade and make a lot of
25 money on once the news of Trump Media broke. That was the

O58Cgarl

Summation - Mr. Shahabian

1 strategy.

2 There's one more thing I want to say about this.
3 Again, Judge Liman is going to give you instructions on what
4 materiality means, but it isn't a 100-percent guarantee. It
5 doesn't mean everyone signed on the dotted line, it's not the
6 night of October 20th. Material is any information that might
7 affect the stock price, that might affect a reasonable
8 investor's decision to invest in the stock. You saw that price
9 jump, members of the jury. Of course it was material to know
10 that DWAC had an inside track to Trump and that that was a
11 potential target for the merger. That was the point. The
12 defendant had material nonpublic information. He had it from
13 the summer.

14 So let's turn to the second question. Did the
15 defendant use that material nonpublic information to trade in
16 DWAC securities? Now, there's no dispute he traded. You saw
17 the charts, he bought DWAC securities. So the question is:
18 Did he trade using the information he had received? Again,
19 Judge Liman is going to give you instructions on this. I
20 expect what he's going to tell you is that to use information
21 in a securities trade means the information in some way
22 informed the investment decision. It must have been a factor
23 in the decision to trade, it need not have been the only
24 factor. You know, members of the jury, that the fact that DWAC
25 was targeting Trump Media was a factor in the defendant's

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Summation - Mr. Shahabian

1 trades because it was what he understood was the point of DWAC.
2 The point was to try to get Trump Media.

3 Let's go through what the defendant knew before each
4 of his trades. We'll take them one at a time.

5 On September 2nd, 2021, the defendant is appointed to
6 the DWAC board. He has a phone call with Patrick Orlando, the
7 DWAC CEO. Sends him an email, great to catch up with you.
8 Things are getting started. The very next day, he's already on
9 the board, he buys 610 DWAC units.

10 Now, members of the jury, think for a minute about all
11 the information we just talked about that the defendant learned
12 in the summer that was nonpublic material information, that
13 Patrick Orlando had been negotiating with Trump, that he
14 already gotten exclusivity with his prior SPAC, that DWAC was a
15 target -- excuse me. That Trump Media was a target of DWAC.
16 The defendant knew all this at the time he made this trade, he
17 knew it was secret, he knew it was material, he was on the
18 board of directors of the company. He had a duty not to use
19 material nonpublic information and he traded right here already
20 on September 3rd. You know why he bought these shares. He
21 bought them because he wanted to buy in advance of a potential
22 announcement. He wanted to get in before anybody knew.

23 September 9th, he emails Eric Hannelius. Look at the
24 second bullet, the announcement -- that's the announcement of
25 the target -- expected 6 to 10 weeks from now is our expected

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Summation - Mr. Shahabian

1 catalyst to then profitably sell the IPO shares. 6 to 10
2 weeks, members of the jury, from the IPO to the merger
3 announcement. The defendant knew that because he had been told
4 that, because he had received that as material nonpublic
5 information that these negotiations were going to happen fast,
6 that this was the plan.

7 Ben Reed, the E.F. Hutton broker, told you he had seen
8 a lot of these SPACs. E.F. Hutton does a ton of them. He
9 testified that the actual time it took for DWAC to go from IPO
10 to merger announcement, which I know you saw my math was not
11 the best in this trial, but from September 2nd to October 20th,
12 that's about six weeks. And Ben Reed said, that's very, very
13 fast. Very, very fast. The defendant knew that already, on
14 September 9th, that this was going to be a fast merger
15 negotiation. And he admitted on cross examination that it was
16 unusually fast for DWAC and TMG to announce their merger after
17 the IPO. He had an advantage already. What did he do the next
18 day after sending that email to Eric Hannelius? He bought
19 another 300 units of DWAC. He bought these shares based on the
20 inside information he knew.

21 The next week, the 16th, Patrick Orlando emails the
22 defendant, we're calling a meeting of the board of directors.
23 Remember, members of the jury, Ben Reed told you a lot of these
24 facts don't do anything, they don't get an acquisition target,
25 nothing happens. That's not what's going on with DWAC.

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Summation - Mr. Shahabian

1 They're already calling a board of directors meeting. They're
2 moving forward. This is secret. The defendant knows this,
3 other people don't. He buys 410 shares the next day. He gets
4 a reminder, board of directors meeting. The next day, again,
5 he buys another 900 shares. He's buying because he has
6 material nonpublic information.

7 Now, when he testified, he tried to tell you, well,
8 this is my investment strategy, I buy a little bit at a time,
9 this is how I normally buy. I'm going to come back to that a
10 bit later. But you know the reason he was spreading his
11 purchases out wasn't because of an investment strategy to buy
12 at the right time. Again, these SPACs are \$10 until an
13 announcement. Nothing's happening. You can buy all at once,
14 you can spread it out, it's going to be about \$10. He spread
15 it out so it doesn't look suspicious, so it doesn't raise any
16 eyebrows. He buys again on material nonpublic information.
17 Tells Patrick Orlando, I can attend the board meeting tomorrow.
18 That night, he gets an email from Patrick Orlando. This is the
19 board packet. This is what they're going to discuss at the
20 board meeting. Six potential targets, one of them, Trump Media
21 Group.

22 Now, you heard the defendant testify and ask questions
23 about this, that all of the information in this memo was from
24 publicly available information. That's not the point, members
25 of the jury. It's not the information about Trump Media that's

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Summation - Mr. Shahabian

1 material nonpublic information, it's that DWAC was targeting
2 Trump Media. They had a target list and Trump Media was one of
3 them, and nobody knew that, and if you knew that, you could buy
4 the shares at the \$10 price before anybody else knew. That's
5 the material nonpublic information.

6 What did the defendant do the next day?

7 Sorry. Before we get to that. You heard Eric Swider
8 explain that to you. The initial pipeline of targets and the
9 discussion the board had about that pipeline, this board
10 packet, it was very sensitive. It was obviously confidential.
11 It was really the whole foundation of what our job was as a
12 board. This was the point of DWAC, find targets, pick one.
13 This is their material nonpublic information until the
14 announcement.

15 What does the defendant do the next day after getting
16 this board packet? He buys 1800 DWAC shares for \$18,000. This
17 is purchasing DWAC securities using the material nonpublic
18 information he's being given. And when did that purchase
19 happen? About half an hour to five minutes before the board
20 meeting. What happens during the board meeting? The consensus
21 of the board is to follow up and negotiate and execute LOIs
22 with TMG, Global Oculus, Bitrix and WAG so that we may conduct
23 deeper due diligence.

24 This is the board narrowing the field of potential
25 targets. We should pursue the high growth group first, one of

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Summation - Mr. Shahabian

1 those was Trump Media. Again, this is material nonpublic
2 information. The board is focusing its search on its key
3 targets. Who are we going to try to negotiate with. And
4 remember, the defendant knows they already have an inside track
5 with Trump because Patrick Orlando had already negotiated an
6 LOI once with them. This is material nonpublic information and
7 the defendant votes, let's pursue these LOIs. He's not just
8 learning this information, he's creating it.

9 What did Eric Swider say about this? The conclusion
10 of the board will follow up and negotiate and execute LOIs with
11 these companies was very sensitive information. That
12 information would be the information that could have the most
13 impact on the company. Our whole job is to find a target to
14 merge with, and so that list would be the most confidential
15 information that we could have. The defendant tried to
16 downplay this. Well, it was just a vote to try to negotiate
17 these LOIs, who knows if they're going to happen, we'll send
18 them out. Members of the jury, come on. This was the point of
19 DWAC, find a target, negotiate with it, get to a merger. This
20 was material nonpublic information.

21 What did the defendant do? He traded, but he learned
22 more before he traded. The next day, there's additional
23 information he gets. Patrick Orlando texts the WhatsApp chat.
24 This is a portion of that chat. He says, TMG, we had a great
25 meeting, going to have a followup session very soon. Mutual

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Summation - Mr. Shahabian

1 exclusivity is very common and they are pushing hard for that.
2 And all the board members, including the defendant, vote to
3 advance on mutual exclusivity with TMG.

4 This is on September 22nd. This is the day after they
5 say, let's negotiate LOIs. Again, they're narrowing the field
6 to Trump Media. And this is just an excerpt of what Patrick
7 Orlando says. I want to go to the full chat because this is an
8 important message, this is important material nonpublic
9 information that the defendant received before he traded.

10 Here's the full message on the right. That's from
11 Government Exhibit 511, if you want to take a look at it.
12 Patrick Orlando tells the board, including the defendant, TMG,
13 we had a great meeting. We're about to have a followup session
14 very soon. We've gotten great traction on lowering the
15 enterprise value of the target, meaning they're getting the
16 price down. We're getting a better deal for DWAC shareholders
17 if this merger happens, but we're getting pushback on the
18 flexibility to be unilaterally exclusive. Unilateral
19 exclusivity is more difficult to get nowadays as more SPACs are
20 chasing targets.

21 Andrew Litinsky explained this to you. Unilateral
22 exclusivity means one side is locked up, but the other side can
23 go out. Here, what Patrick Orlando is saying is, look, Trump
24 Media won't agree to let us keep looking for other targets,
25 they want mutual exclusivity. Patrick Orlando says it's very

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Summation - Mr. Shahabian

1 common, they are pushing hard for that, they're using the
2 market norm. This they're telling us if we don't reach an
3 agreement on mutual exclusivity, they are in touch with other
4 SPACs and they may go somewhere else, we may lose this. So if
5 we were to go into our next meeting, would the board vote to
6 approve us entering into a mutually exclusive LOI. The just
7 going to be the two of us negotiating. We won't negotiate with
8 anyone else, Trump Media can't negotiate with anyone else.
9 That's the point of this question. We want board approval
10 before we go into our next meeting, can we do this, can we get
11 mutual exclusivity. What does the defendant say? I'm
12 enthusiastically in favor to advance with TMG under those
13 terms. Enthusiastic, because that's the point, they're trying
14 to get Trump Media, and this is a big step towards doing that.
15 This is huge. These weren't emails back and forth between
16 lawyers and someone DocuSigns a contract. Andrew Litinsky told
17 you, we met at Mar-a-Lago, the former president signed the
18 mutually exclusive LOI that day, the 22nd, and so did Patrick
19 Orlando, we took pictures, people brought their wives. This is
20 a huge event in the merger negotiations.

21 Now, we're not saying that the defendant saw these
22 pictures, that he was at Mar-a-Lago, but members of the jury,
23 you know this was huge because it was obvious to all of the
24 sophisticated businessmen in this deal, that this is a big step
25 towards a potential merger. We're agreeing to only talk to

O58Cgarl

Summation - Mr. Shahabian

1 each other to try to get to a merger agreement.

2 This is Andrew Litinsky.

3 "Q. Was the signing of the exclusive letter of intent between
4 DWAC and Trump Media Group an important event in the merger
5 negotiations?

6 "A. I would agree with that.

7 "Q. Why?

8 "A. I think any time two companies -- I guess I can speak for
9 ours, that's Trump Media. Any time you're entering into an
10 exclusive LOI, it's a serious step on the way to a merger
11 potentially, it's not a guarantee, but it could be to a merger,
12 which would be the ultimate goal for a SPAC. And for a
13 operating company like ours, you know, it's a serious thing.
14 This was a big step in the merger negotiations.

15 MR. SHAHABIAN: What does the defendant do after
16 learning this information, learning that Patrick Orlando was
17 seeking approval for mutual exclusivity that Trump Media was
18 pushing for that or they would walk away and look for another
19 SPAC? He buys 1300 DWAC units for \$13,000 the very next day.
20 This is purchasing securities using the material nonpublic
21 information he had received. This, members of the jury, this
22 is huge. This is insider trading. The defendant testified he
23 had no serious explanation for this, none at all.

24 You saw some summary charts that the defendant was
25 really busy that day, that he sent emails and attended some

O58Cgar1

Summation - Mr. Shahabian

1 phone calls, but he had time to buy 1300 DWAC units the day
2 after approving moving forward with mutual exclusivity. He was
3 busy, but he wasn't too busy to commit insider trading.

4 The defendant received material nonpublic information.
5 He got it as early as the summer when he learned that DWAC was
6 targeting Trump Media. He got appointed to the board, he kept
7 learning information about the negotiations, and then he traded
8 in the securities of the company he was on the board for after
9 learning that information. This is using material nonpublic
10 information to purchase securities. The defendant used the
11 information he had received to trade.

12 So that takes us to the third question. Did the
13 defendant tip others? Now, I'm going to talk about the
14 charges, the actual five counts you're being asked to vote on
15 at the end of my remarks. This third question, did he tip
16 others, it doesn't relate to all of the counts, it only relates
17 to some of them. The fact that the defendant himself bought
18 securities for himself, that's enough to convict on some of the
19 counts, and we'll talk about that at the end. Part of the
20 evidence is and part of the counts are that he didn't just
21 trade for himself, he tipped others. He told them to trade on
22 the basis of material nonpublic information. In particular,
23 you're going to be asked to determine if the defendant tipped
24 two people: Michael Shvartsman and Eric Hannelius.

25 Now, you heard a lot of names about people who traded

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Summation - Mr. Shahabian

1 in this trial, and I'm going to talk about them because it's
2 evidence that you should consider in determining what the
3 defendant did, how we proved to you that he traded on material
4 nonpublic information, and that he tipped that information to
5 others. But the question you're being asked to decide is
6 whether he tipped Michael Shvartsman and Eric Hannelius, and
7 those other tippees, that other information, I'm going to go
8 through that for that basis, to help you see that's what he
9 did, that he tipped these two men.

10 Let's start with Michael Shvartsman. It's defendant's
11 boss at Rocket One Capital. He's the person he built the
12 syndicate for to bring people into the DWAC deal. We're
13 jumping all the way to September 20th. We're focusing on the
14 trades here. The defendant texts Michael Shvartsman, I have a
15 board meeting tomorrow at 12:30. I recommend starting to buy
16 more DWACU stock. Recall, we only own \$145,000 worth of a
17 \$400,000 target position. You can buy more by calling Ben
18 Reed, your broker, at E.F. Hutton. This is September 20th.

19 Again, members of the jury, you heard about everything
20 they learned in the summer, that DWAC had an inside track to
21 Trump Media, that Patrick Orlando had already executed an
22 exclusive LOI with his last SPAC, that DWAC was targeting Trump
23 Media. And this is him telling Michael Shvartsman, start
24 buying DWAC stock after he's on the board, after he's got a
25 board meeting scheduled. This is tipping him. This is telling

O58Cgarl

Summation - Mr. Shahabian

1 him to trade on inside information.

2 (Continued on next page)

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1 MR. SHAHABIAN: Now I want to keep going after the
2 defendant's trade on the 23rd. Remember, he said none of this
3 was material until the very end, until right before the merger
4 announcement—that's when I realized there might be something
5 here. Until then it was all "pie in the sky" aspirational.
6 That's not what he was being told at the time, members of the
7 jury. He was lying to you.

8 Government Exhibit 511, September 23rd. This is the
9 board WhatsApp. Alex Monje, third sentence: "TMG expressed
10 interest in announcing next week." Announcing what, members of
11 the jury? A merger. These negotiations are moving fast. They
12 want to get to an announcement. The defendant knew that on
13 September 23rd.

14 September 29th. The defendant gets a text message
15 from Patrick Orlando. This is, again, to the board WhatsApp.
16 "TMG wants to close on October 14th." What does "wants to
17 close" mean? Close the merger. Announce the deal. This is
18 fast. They are moving. The defendant knew this, on
19 September 29th. This is material.

20 And he's talking to his boss, Michael Shvartsman. You
21 saw the chronology. There are phone calls. We don't have the
22 content of those phone calls, we don't know exactly what was
23 said, but they're in touch. They work together. Two calls
24 that day, September 29th.

25 The next day, Patrick Orlando tells the board, "We're

O581GAR2

Summation - Mr. Shahabian

1 at TMG headquarters. We're doing our due diligence. This is
2 the agenda for the day." Later that day, phone call between
3 the defendant and Michael Shvartsman. Right after that phone
4 call, ten minutes later, the defendant texts Michael
5 Shvartsman. "Note: DWAC warrants started trading today. That
6 means they traded just below 50 cents on a volume of 116,000.
7 That means there were only 60,000 of volume today. Volume
8 should pick up as holders disaggregate." And he reminds him,
9 "Ben Reed is your contact to trade." It's time to start buying
10 DWAC warrants.

11 Now, members of the jury, warrants are a little
12 different than the founders shares they invested in, from the
13 IPO shares that have the redemption rights. Warrants are
14 risky. The defendant admitted on cross-examination that if
15 DWAC did not find a merger target, if, like a lot of these
16 SPACs, nothing happened and you didn't exercise your warrants,
17 they would expire. They'd be worthless. There's no redemption
18 rights in the warrants.

19 What does Michael Shvartsman do, the very next day,
20 after receiving this text message? He calls Ben Reed. He
21 emails him. He cc's the defendant. The defendant knows what
22 he's doing. And he says, "I want to buy 2 million warrants in
23 DWAC. Don't run up the price. Spread it out over the next few
24 weeks. Not in a rush." He's got the defendant on the board.
25 Knows, I've got a few weeks. Start buying warrants. And that

O581GAR2

Summation - Mr. Shahabian

1 day, the Rocket One Capital account purchases \$100,000 worth of
2 warrants. The warrants are cheap. They're 50 cents, about, a
3 little less than that, but we're going to look at those price
4 charts. When they hit, they hit big.

5 October 1st. Again, they're talking about the warrant
6 plan. The defendant texts Michael Shvartsman a picture of the
7 current price of DWAC warrants, 46 cents. They exchange some
8 phone calls. Keep buying warrants.

9 And on October 4th through 5th, Rocket One buys the
10 rest of the 2 million-warrant plan, over 1.7 million warrants.
11 This is another almost \$900,000 worth of DWAC warrants. The
12 defendant—or, excuse me—Michael Shvartsman has to confirm
13 each of these trades with Ben Reed before he buys. This is
14 purchases based on the material nonpublic information they
15 have.

16 And when the announcement happens on October 20th, the
17 warrants jump from about 50 cents to \$14.49, to \$79.22. And
18 the defendant and Michael Shvartsman sell their securities; the
19 defendant for \$50,000, Michael Shvartsman for about 18 million
20 profit. And the defendant texts Ms. O'Shea: "Big day today.
21 We made 20 million." The plan worked. This was their plan.
22 Get in on DWAC, get in before they announce it's Trump; when
23 the merger happens, we're going to make a lot of money. The
24 defendant tipped Michael Shvartsman. He told them to start
25 buying securities based on this material nonpublic information.

1 Now when the defendant testified, he gave you some
2 explanations about why they were buying warrants. First he
3 said—and also why he traded, not just the warrants. But for
4 the warrants, he said, well, it wasn't really about Trump
5 Media, it was even before the first meeting, Michael Shvartsman
6 was interested in warrants. I looked at the public filings, I
7 ran a Black-Scholes calculation, and I thought, you know, this
8 is a good investment, generally, not because it's Trump.
9 That's bogus, members of the jury. That's not a trading
10 strategy. Saba Capital explained to you what a trading
11 strategy is. If you don't know who the merger target is, like
12 Saba, you just invest in all of them. You have a diversified
13 portfolio. And if one of them succeeds, you don't know which
14 one, then you've got exposure to them, then you'll make money.
15 That's not what the defendant and Michael Shvartsman did. He
16 admitted on the stand, he had only invested in one SPAC; Rocket
17 One had only invested in one SPAC—DWAC. And that was because
18 they knew the target was Trump Media, not because of a
19 Black-Scholes analysis. The defendant said, well, he'd been
20 hearing a lot about SPACs, you know, he added to his portfolio
21 conservatively. Again, he was minimizing. He was lying to
22 you, because the reason he wanted to hide his trades was to
23 avoid anyone knowing a board of director member had bought DWAC
24 shares. The only reason to buy this SPAC, one particular SPAC,
25 that the general public knows nothing about other than Patrick

O581GAR2

Summation - Mr. Shahabian

1 Orlando is on the board and the other management, they don't
2 know who they're targeting, they don't know what the plans are,
3 it doesn't make any money. The only reason the defendant and
4 Rocket One invested was because it was Trump. He tipped
5 Michael Shvartsman from the board. He told him, start buying
6 DWAC, start buying warrants, start executing our plan.

7 The defendant also tipped Eric Hannelius. That was
8 Michael Shvartsman's business partner. You heard about him
9 during the trial. On September 9th—again, this is after the
10 defendant is on the board—he tells Eric Hannelius, "the
11 announcement expected 6-10 weeks from now." That's going to be
12 how we make money on our shares.

13 The defendant and Eric Hannelius meet up in Miami.
14 They're both there that week. And at the end of that meeting,
15 on September 13th, the defendant—excuse me—Eric Hannelius
16 buys 500 DWAC units.

17 We know that's because of what the defendant told him
18 during their stay in Miami because of the emails that follow.
19 This is from October 3rd, from Eric Hannelius to Bruce
20 Garelick. "Hi, Bruce. Want to follow your lead here. I have
21 been buying some DWACU since seeing you in Miami via my
22 brokerage account." This is him telling him, we met in Miami,
23 we talked about DWAC, and then I bought open-market shares.
24 They had material nonpublic information. They knew an
25 announcement was coming. They knew it was targeting Trump

O581GAR2

Summation - Mr. Shahabian

1 Media. He said, "Should I keep buying? What's your thoughts?
2 Again, want to follow your lead here. Any updates on timing
3 and next steps from Patrick Orlando?"

4 The defendant testified, members of the jury, and he
5 tried to explain this. He said, well, I knew right away this
6 crossed a line. I couldn't tell him anything. I was on the
7 board. And that's what I told him. He lied, members of the
8 jury. This email doesn't say, I can't tell you that, we
9 can't—we can't talk about this. He says, "Hi, Eric, Free to
10 discuss this today or tomorrow morning." They have several
11 phone calls. The first one between the defendant and Eric
12 Hannelius is 30 minutes. It doesn't take 30 minutes to say, I
13 can't tell you anything. This was improper. You didn't see an
14 email after the fact from the defendant, Just following up to
15 confirm, I can't tell you anything. I'm glad we spoke about
16 it. Nothing from Eric Hannelius, Sorry I mentioned this to
17 you, my bad, I won't ask you again.

18 This was a tip. This was talking about DWAC, talking
19 about the plan. This is October 4th. We saw there were
20 several phone calls involving the defendant, Eric Hannelius,
21 and Michael Shvartsman. The merger negotiations are ongoing.
22 The defendant is accessing the data room that Trump Media had
23 set up.

24 October 5th. The defendant and Michael Shvartsman
25 speak, and their plan is complete this day. Michael Shvartsman

O581GAR2

Summation - Mr. Shahabian

1 gets an email from Ben Reed. They purchased the 2 million
2 warrants. That day, the defendant and Michael Shvartsman talk.
3 After that, Michael Shvartsman and Eric Hannelius talk after
4 that. And then the very next day, Eric Hannelius buys a
5 thousand DWAC warrants. This is a purchase of shares based on
6 the discussions of Trump Media. It's not the only person.
7 Anton Postolnikov buys 510 units that day. We'll come back to
8 Mr. Postolnikov.

9 That evening, Michael Shvartsman calls Gerald
10 Shvartsman, his brother. Less than a minute after that call,
11 members of the jury, Gerald Shvartsman emails the broker, Ben
12 Reed, "I'd like to buy some warrants in DWAC—D SPAC. Can you
13 call me tomorrow." Right after the phone call with Michael
14 Shvartsman. This is the tipping chain. The defendant is
15 telling Eric Hannelius, he's telling Michael Shvartsman,
16 Michael Shvartsman, now that his plan is over, he's got his
17 2 million warrants, he tells his brother, this merger is
18 coming, it's time to start buying warrants.

19 The next day, Gerald Shvartsman buys 275,000 DWAC
20 warrants. He spends \$130,000 on warrants. Eric Hannelius
21 keeps buying DWAC warrants. The negotiations are ongoing. The
22 defendant is in touch with Michael Shvartsman. He tells the
23 directors, "I remain enthusiastic in support of TMG as the
24 prime target for us."

25 And then we jump to October 12th, when Anton

O581GAR2

Summation - Mr. Shahabian

1 Postolnikov purchases 500,000 warrants.

2 Now I want to spend a little bit of time on Anton
3 Postolnikov, not because you have to find the defendant tipped
4 him as part of your jury deliberations but because I expect the
5 defense is going to bring up Anton Postolnikov and who tipped
6 him a lot. And you heard that during some of the
7 cross-examination of Marc Wachter who, with Anton Postolnikov
8 on the 16th, on the 17th, on the 18th, on the 19th, who had
9 dinner with him, who was in Miami. None of that matters,
10 members of the jury. Because even though Anton Postolnikov
11 bought shares at the end of October, that was all based on this
12 trade, on October 12, 2021. Unlike the defendant, who
13 purchased his shares on each day, each day he traded, he logged
14 into his account and bought shares, that's not what Anton
15 Postolnikov did. On October 12th, he told Ben Reed, I want
16 500,000 worth of warrants. Start buying today. He got a
17 hundred thousand on October 12th, but the other purchase is at
18 the end. 16th, 17th, 18th, that's from this 500,000 standing
19 order. This happens after the defendant traded, after Michael
20 Shvartsman had already purchased 2 million warrants, after Eric
21 Hannelius had started buying units and warrants, and after
22 Michael Shvartsman had told his brother, it's time to start
23 buying warrants. That's when Anton Postolnikov puts in a
24 standing order for 500,000 warrants.

25 The idea that there was another tipper who told Anton

O581GAR2

Summation - Mr. Shahabian

1 Postolnikov that wasn't the defendant, that it came from Marc
2 Wachter on the 16th or the 17th, he traveled backwards in time
3 and told Anton Postolnikov start buying, it's ridiculous,
4 members of the jury. The purchases for the 500,000 warrants
5 continued, but the order was placed on the 12th.

6 And again, I'm doing this because I expect you're
7 going to hear a lot about Marc Wachter. He wasn't on the
8 board. He didn't have access to the information that the
9 defendant had. He didn't trade. If you were expecting to
10 commit insider trading, you would expect to buy some for
11 yourself, like the defendant did. He never traded in DWAC
12 securities. He didn't just not trade; you saw, members of the
13 jury, he was pissed. He lost money because he transferred his
14 founders interest, that hundred thousand dollars' worth of
15 founders shares, to Zoltan Present, right before the merger
16 announcement. And to do that, he had to push Patrick Orlando.
17 You saw the texts, you saw the emails. Hey, I got to get this
18 transfer done, I'm trying to get this deal done so Mr. Present
19 can close on his house. And he's pissed that Patrick Orlando
20 didn't tell him, oh, maybe we should wait a week, let's slow
21 this down a bit. His shares went from a hundred thousand to
22 2 million. Now he didn't have them yet, and he admitted, I
23 don't know when I'm going to get them, just like Hartley Wasko
24 is not sure when he's going to get his founders shares. But he
25 didn't buy securities. He didn't make money on this supposed

1 tip he made. This is a ludicrous theory.

2 And he had immunity. You're going to get an
3 instruction on this, members of the jury. You should
4 scrutinize the testimony of immunized witnesses carefully.
5 They're testifying on the understanding that what they say
6 can't be used against them in a future prosecution. You heard
7 Netanel Suissa say, yes, I traded after I got the tip. He had
8 immunity. You heard Adrian Lopez Torres say, yes, I traded
9 after I got the tip. He had immunity. And you heard Marc
10 Wachter. We shouldn't say you should believe him because you
11 like him or you think he's always a trustworthy guy, but he
12 admitted to potential securities fraud and soliciting
13 investors, he admitted to potential mortgage fraud in this
14 transfer to Zoltan Present to close the deal, he admitted to
15 potential insurance fraud in the Postolnikov life insurance
16 deal. But he said, I didn't tip anybody. I didn't have that
17 information, and I'm pissed 'cause I lost money. And you can
18 believe him because that's consistent with the emails and the
19 text messages, and all the other evidence in this case. So the
20 idea that there was another tipper for Michael Shvartsman and
21 Eric Hannelius to trade, that it was Marc Wachter at the very
22 end, it just doesn't add up. And that's all I'll say about
23 that.

24 The truth is, the defendant was the tipper. He was
25 the babysitter on the board. Here's Government Exhibit 742

1 again. This is the text chain between Anton Postolnikov and
2 the defendant, in June of 2021. Anton Postolnikov says,
3 "Mike," that's Mike Shvartsman, "told me you are going to be on
4 the board." The defendant says, "Hopefully. Awaiting
5 approval. Probably more of a front row babysitting job, but
6 well worth it for an unconventional investment like this."
7 What is the babysitting job, members of the jury? It's to make
8 sure their plan works, that DWAC lands the Trump Media merger,
9 that he can tell everybody else what's going on. That's the
10 babysitting. That's the tipping.

11 Now after these trades, the defendant continues to get
12 updates on the merger. This is October 15th. This is when
13 Alex Monje says, "We're progressing very well on the definitive
14 agreement. We need to extend the exclusivity you already voted
15 on in September 22nd." This is when the defendant said, for
16 the very first time, he realized he might have material
17 nonpublic information. Before this, it was pie in the sky,
18 could have fallen apart at any time, just didn't think about
19 it. That was bogus, members of the jury. This is just the
20 continuing negotiations that have been going in earnest as soon
21 as DWAC IPO'd. The defendant votes to approve the extension.

22 The 17th. He gets the draft definitive merger
23 agreement. Now again, this pie in the sky, things could have
24 fallen apart, that could happen at any time—and Patrick
25 Orlando says it on the 17th. That's the second text message.

O581GAR2

Summation - Mr. Shahabian

1 "To be clear, no deal has been made yet. It's not final until
2 everybody signs. Everyone knows president Trump can be fickle,
3 but this is important. These negotiations are highly
4 confidential."

5 That evening, the defendant and Michael Shvartsman
6 talk for 30 minutes. The next morning, Michael and Gerald
7 Shvartsman talk for 43 seconds. Now that's not a very long
8 phone call, but it doesn't take very long to say, hey, merger's
9 happening, get ready.

10 The defendant texts Michael Shvartsman, "I have a
11 board Zoom meeting. I should free up." And then that day,
12 Gerald Shvartsman says, "I want to buy another hundred thousand
13 warrants." That day. Because he knew from Michael Shvartsman,
14 who knew from the defendant, the merger was happening.

15 And you know that Gerald Shvartsman was getting
16 specific information about the merger because of how detailed
17 the information was he provided to his employees. Adrian Lopez
18 Torres: They're going to announce in two weeks a merger with
19 Trump Media, that's what Gerald told me. This is that highly
20 confidential information Patrick Orlando said about in the
21 board WhatsApp. He tells Netanel Suissa, who said the same
22 thing when he testified. Mr. Suissa bought shares that day, on
23 October 19th.

24 That same day, the defendant, Eric Hannelius, and
25 Michael Shvartsman fly to Las Vegas. They all check in at the

O581GAR2

Summation - Mr. Shahabian

1 Wynn. This was the Las Vegas group chat we spent a lot of time
2 on. There's Eric Hannelius on the left, Michael Shvartsman to
3 his right, and the defendant all the way to the right. They're
4 all in this group chat together, Los Vegas.

5 That day, the 19th, Michael Shvartsman says, "Come to
6 my room, 5506." The defendant says, "All right. I'm on my
7 way. They're letting me up." That's at 4:30, 4:45. The
8 defendant then dials into the board meeting at 6:00, where he
9 votes on the merger agreement, where he says, "The potential is
10 enormous. This is unlike any other kind of media internet
11 startup I've ever seen in my life." The board meeting ends at
12 6:50. This merger agreement is happening. Less than 30
13 minutes later, the defendant texts the board—sorry, not the
14 board, the Los Vegas group chat—"What are our meet-up plans
15 tonight?" Phil Margolin and Michael Shvartsman say, "The
16 suite," Mr. Shvartsman's room, "7:45." At the same time,
17 Michael Shvartsman is telling Aric Gastwirth, "Come to my
18 suite." He says, "I'll be there around 8." Everyone's getting
19 there at about the same time. This is the night after the
20 defendant votes to approve the merger agreement.

21 And what happens that night, while they're in Vegas?
22 Well, about an hour later, Eric Hannelius logs into his E*Trade
23 account, and then about an hour after that, he buys 10,000 DWAC
24 warrants. And the very next morning, Aric Gastwirth buys
25 150,000 DWAC warrants. You know what happened here, members of

O581GAR2

Summation - Mr. Shahabian

1 the jury. They're in Vegas, they get the news that the merger
2 announcement is coming, and when it's announced the next day,
3 they all sell and they make millions. Eric Hannelius, 168,000;
4 Gerald Shvartsman, 4.6 million; Anton Postolnikov,
5 14.5 million; Aric Gastwirth, 1.4 million; Adrian Lopez Torres,
6 400,000; Netanel Suissa, 16,000.

7 Now, again, members of the jury, you're only being
8 asked to determine if the defendant tipped Michael Shvartsman
9 and Eric Hannelius. But you know that this tipping chain
10 proves that that's exactly what the defendant did. They all
11 knew the merger was coming, and they all made a ton of money on
12 it.

13 The defendant tipped Michael Shvartsman and Eric
14 Hannelius.

15 So that brings us to our fourth question. Did he
16 violate his duties, his duties of trust and confidence to DWAC,
17 to its shareholders, even to Benessere? Because he had signed
18 a nondisclosure agreement with Benessere. Did he violate his
19 duties? He did.

20 Now I don't think there's going to be a dispute here.
21 The defendant had a duty, right? He admitted on the stand that
22 he understood that as a board member, he had a fiduciary duty.
23 He had to put shareholders' interests ahead of his own as a
24 member of the DWAC board. And the parties have stipulated that
25 if you're the member—if you're a director of a public company

O581GAR2

Summation - Mr. Shahabian

1 like DWAC, you have a duty of trust and confidence to the
2 company and its shareholders.

3 Eric Swider told you he understood what that duty
4 meant. It meant he couldn't disclose the information. He
5 couldn't trade on it. This is part of his explanation of when
6 he panicked, when he accidentally bought one share of DWAC
7 after the public announcement. Remember he said he wanted to
8 look up the price, he was curious, and to do that he
9 accidentally bought a share. And he sold it immediately,
10 because he realized that as a board of directors member, it
11 could be a problem that he's purchasing DWAC securities. He
12 didn't know if he still had nonpublic information yet. So what
13 did he do? He talked to Patrick Orlando. We talked about that
14 with Mr. Swider. And he explained to you why. He said, well,
15 I know there's a lot of rules as a board member around buying
16 and selling securities of the company you're on the board of.
17 It's confidential. He wanted to know if he was cleared. And
18 so he wanted to talk to Patrick Orlando to see if this was
19 something that we needed to disclose. The defendant's
20 co-director understood, couldn't trade, couldn't tip, talked to
21 Patrick Orlando as soon as he accidentally did it.

22 Trump Media, the other side, Andrew Litinsky, they
23 understood that too. Andrew Litinsky said, I did not share
24 news of the potential merger or merger negotiations with anyone
25 who wasn't authorized. It was confidential. It would be

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Summation - Mr. Shahabian

1 against the rules to do so. He also said he never traded in
2 the securities of DWAC or Benessere because it would have been
3 against the rules. He knew he couldn't do that.

4 The defendant violated these duties when he traded,
5 when he tipped based on material nonpublic information he was
6 in possession of.

7 The people who testified at this trial, who said they
8 knew nonpublic information and they knew it came from DWAC, did
9 not trade in DWAC securities. Eric Swider. I should correct
10 that. He accidentally purchased a share and then he sold it.
11 Andrew Litinsky, never traded. Eric, or Marc Wachter, never
12 traded. Hartley Wasko, never traded. That's because they all
13 understood they had duties of confidentiality.

14 This is one of those nondisclosure agreements. This
15 is the other source of the duty that the defendant had, because
16 it wasn't just as a director; he had promised in the summer to
17 keep the information that he received confidential. He signed
18 this nondisclosure agreement. You can look at it. It's
19 Government Exhibit 209. And it says any possible target
20 transaction is confidential information. Possible target
21 transaction. The possible merger with Trump Media, that's
22 confidential. The defendant promised he will keep the
23 information confidential. He promised he won't use it except
24 to decide whether to invest in DWAC, the founders round shares.
25 That was the point of this. You're going to meet with us in

O581GAR2

Summation - Mr. Shahabian

1 the summer. We're going to pitch you on the opportunity to get
2 in at the founders share, but you have to promise to keep this
3 information confidential, to only use it to decide whether to
4 invest in the founders round shares. And you don't need to
5 read all the technical-legal language in the nondisclosure
6 agreement to understand that. Hartley Wasko testified, he
7 understood that. That's how these business discussions work.
8 You're getting a pitch. They're telling you their secret
9 information. To do that, you have to agree to keep it
10 confidential. You can't turn around and use it against them.
11 That's the point of these nondisclosure agreements. They
12 create duties of trust and confidence. The defendant signed
13 one with DWAC; he signed one with Benessere too, because
14 remember, that exclusive letter of intent, that was with
15 Benessere. That's the one they were shown during the summer
16 meeting.

17 And the defendant knew that this information that he
18 had received in the summer that was under this duty of trust
19 and confidentiality, that the only reason he was getting this
20 information is because of the nondisclosure agreement. This is
21 an email he sent, Government Exhibit 418, to the DWAC team. It
22 says, This is our syndicate. These are all the people we want
23 to bring in under the tent. We want them pitched on DWAC. We
24 want them invested on DWAC. And what does he say under the
25 spreadsheet? "Note: Some of these investors that we're

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Summation - Mr. Shahabian

1 bringing in may still need to sign an NDA with you." He knew
2 from the summer that when he was getting this material
3 nonpublic information, it was under this duty of
4 confidentiality. All the potential investors had to sign these
5 NDAs. That's how they got the information. That was the basis
6 on which they were being brought into the tent.

7 But those weren't the only duties the defendant owed.
8 On September 2nd, he became a director of DWAC. He was on the
9 board. He owed duties of confidentiality as a board member.
10 He owed duties not to tip, not to engage in insider trading, as
11 a board member. And all of his trades happened after he became
12 a board member and was subject to these duties. He had these
13 duties and he violated them. He violated them when he traded
14 based on material nonpublic information, when he tipped others
15 and told them to trade based on material nonpublic information,
16 while he was a director, after he had signed these NDAs.

17 So that takes us to the last question: Did he know
18 what he was doing was wrong?

19 Again, he admitted he knew he had a fiduciary duty to
20 the company; he knew he had to put DWAC's interests and
21 shareholders' interests ahead of his own; he knew he shouldn't
22 be trading or tipping.

23 This is Government Exhibit 967. After the merger
24 announcement. Justin Friedberg, the employee he didn't really
25 like, asks him, "You make out like a bandit?" And he says,

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Summation - Mr. Shahabian

1 "I'm on the board. I was very limited. I was severely
2 restricted." He understood he should not be doing this. He
3 didn't tell Justin Friedberg, but, you know, I bought some
4 securities on the side 'cause I thought it was okay. Because
5 he knew he wasn't supposed to. He knew he was restricted. He
6 knew it was wrong.

7 And he hid what he had done from DWAC and from its
8 shareholders. This is one—this is the Form 3 that Peter
9 Melley described in his testimony. When you're a director of a
10 public company and you own stock in the company that you're a
11 director of, you have to tell the public. And he did that with
12 the initial founders shares that he got—or, excuse me—the
13 initial shares he got as a member of the board. He signed the
14 Form 3 on September 2nd, disclosing he had 7500 shares coming
15 to him as a director. But he never filed any of the other
16 required SEC forms disclosing that he had been purchasing on
17 the open market after September 2nd. Never filed a Form 4,
18 never filed a Form 5. This is the only document he ever signed
19 where he disclosed the purchases he had made.

20 And this is repeated in every public filing of DWAC
21 after the defendant gets on the board, including through its
22 10-K, which, if you look at Government Exhibit 130, this is for
23 the fiscal year ended December 31, 2021. This is for, in 2022,
24 after he's sold everything, made all his money. What does it
25 say? Same 7500 shares. He never disclosed that he had made

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Summation - Mr. Shahabian

1 any of these securities transactions. And you can see in the
2 bottom right—I'm not saying you have to do this,
3 but—Government Exhibits 107, 109, 110, 111, 112, 113, 116,
4 those are all SEC filings of DWAC, and they say the same thing.
5 Bruce Garelick, 7500 shares. Never disclosed his transactions.

6 This wasn't a mistake. This wasn't a "I didn't know I
7 needed to do that." He testified, members of the jury. He
8 never said, "I didn't know I had to file a Form 4 or 5. Nobody
9 told me I had to do that." And there's a reason he didn't say
10 that, because he knew that would be a blatant lie, that would
11 be a step too far, because he had to admit he knows what an
12 insider sale is. He's a hedge fund portfolio manager. He had
13 his own hedge fund. He analyzed public stocks and he admitted,
14 you know that insider sales are publicly reported. It's part
15 of what people like hedge fund managers use to make
16 investments. Do the directors believe in the company? Are
17 they buying or are they selling? He knew what he had to do and
18 he didn't do it, because he wanted to hide the fact that he was
19 engaging in insider trading. He wanted to hide that he knew
20 what he had done was wrong.

21 And he knew that not just from this. You heard from
22 Ben Reed, the broker from E.F. Hutton, on the redirect
23 examination. He said, if I knew that somebody of a director of
24 the company was placing trades, I wouldn't have placed the
25 trade. I would have called my compliance officer. This is a

1 huge deal, and the defendant knew it, and he failed to file the
2 forms so no one would know what he was doing.

3 He knew that because he'd been trained on this
4 throughout his career. He'd been in the industry for decades.
5 He was a CFA. You heard that to take that rigorous
6 examination, you have to know that you can't trade on the basis
7 of material nonpublic information, you can't tip others. He
8 knew that when he worked at Adage Capital and signed those
9 compliance manuals. And he knew this wasn't just a formality.
10 Daniel Lehan, his former co-worker, testified, "Our integrity,
11 our ethics, our reputation, this is critical, this is our most
12 important asset." This isn't Netanel Suissa, who opened up his
13 Robinhood account and couldn't find the DWAC warrants. This is
14 a sophisticated hedge fund professional. He knew he should not
15 be doing this. He used the Adage manual. The same language is
16 in his hedge fund's compliance manual. But what he said was, I
17 kept a tight lid on what Michael does. It's his business. I
18 only brought in the people Michael told me to. He knew what he
19 was doing was wrong.

20 Now I expect you're going to hear the defendant's, I
21 only bought 50,000, I bought it over a slow period of time
22 because that's my portfolio strategy, that's how I do all my
23 purchases. You saw the evidence, members of the jury. But the
24 most important reason you know the defendant knew what he was
25 doing was wrong was because he took the stand and he lied to

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Summation - Mr. Shahabian

1 you about what he did and why he was doing it. You can take
2 that into consideration when you determine whether he knew what
3 he was doing was wrong, and you should, because he did. He
4 didn't buy only 50,000 because it was a conservative portfolio
5 investment; he only bought 50,000 because he didn't want to get
6 caught. It's one thing for Michael Shvartsman, who isn't on
7 the board, to be buying millions in warrants. That's why Ben
8 Reed didn't think twice about it. He placed the orders. But
9 when the director of a public company, if he bought 2 million
10 warrants, that would raise some flags. So the defendant hid
11 his trading. You know, it's not fair that all these rich
12 people are making millions of dollars while he had to take one
13 for the team and sit on the board of directors and make sure
14 the plan worked, decided he wanted to make a little money for
15 himself, \$50,000. But he didn't want to get caught, so he
16 bought it slowly, he bought it in his retirement account, he
17 did it over a period of time so that no one would notice. And
18 then when he took the stand and tried to explain it away, he
19 lied to you. This wasn't a conservative strategy. This was
20 masking his trades. The defendant got greedy. He wanted a
21 taste of the action. He knew what he was doing was wrong. He
22 just thought no one would notice. That's why he lied when he
23 didn't file any Form 4s or Form 5s like he was supposed to.
24 That's why he lied on his CFA attestation when he said, after
25 the FBI approached him, that he wasn't under investigation.

O581GAR2

Summation - Mr. Shahabian

1 And it's why he lied to you, because he knew this was wrong.
2 He knew he shouldn't be doing this.

3 The defendant committed insider trading. We have
4 proven that to you beyond a reasonable doubt. And you're going
5 to get detailed instructions on the charges from Judge Liman
6 today. But I want to explain to you briefly what those charges
7 are so you're not surprised when you hear them from Judge
8 Liman.

9 So the defendant's charged in five counts.

10 Count One charges him with conspiracy to commit
11 securities fraud. A conspiracy, you'll hear, is an agreement
12 between two or more people to commit a crime—in this case,
13 insider trading. We have proven that the defendant entered
14 into a conspiracy to commit insider trading when he agreed with
15 Michael Shvartsman, when he agreed with Eric Hannelius, to
16 commit insider trading. That's Count One.

17 Count Two, Title 15 securities fraud. This is what's
18 called a substantive count of insider trading. What this
19 means, members of the jury, is that the defendant committed
20 insider trading when he purchased his own shares. That's what
21 Count Two is. And we've proven that to you beyond a reasonable
22 doubt.

23 Count Three is one of the tipping counts. This is
24 that the defendant committed insider trading when he tipped
25 Michael Shvartsman, who purchased the 2 million warrants.

1 We've proven that to you beyond a reasonable doubt. That's
2 Count Three.

3 Count Four is the second tipping count, that the
4 defendant committed insider trading when he tipped Eric
5 Hannelius, who purchased DWAC securities on the open market.
6 We've proven that to you beyond a reasonable doubt.

7 Count Five is another kind of insider trading that
8 Judge Liman will explain to you, but basically it's the full
9 scheme, that the defendant was given property, valuable
10 confidential information of DWAC—the fact that Trump Media was
11 a potential target—and that he misappropriated that property,
12 that he used it for himself and for others by committing all
13 the insider trading we talked about. So that you can find, if
14 you apply it to his trades alone, that is sufficient to convict
15 on Count Five. It also applies to the tipping counts. It's
16 sort of a combination of Counts Two through Four but explained
17 in the context of different elements. So you should listen to
18 Judge Liman about that, but the key is, he got this
19 confidential information and he converted it, he embezzled it,
20 he lied to DWAC by using it for himself. That's Count Five.

21 Members of the jury, the defendant was a director of a
22 public company. He had a position of trust. DWAC trusted him,
23 DWAC's shareholders trusted him to act in their interests, to
24 put his duty of loyalty to them above any loyalties he might
25 have to Michael Shvartsman, above himself. He had a duty not

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Summation - Mr. Shahabian

1 to use the information he learned for his profit or for his
2 company's profits. He promised them, promised them that he
3 would follow those duties. And then he lied to them. He broke
4 those promises. He broke his promises to DWAC. He broke his
5 promises to shareholders. He thought he could get away with
6 it. He thought he'd get away with it this week when he lied to
7 you about what he had done and why he did it. It is time to
8 hold him accountable for these egregious breaches of trust and
9 confidence that shareholders placed in the director of a
10 publicly traded company. He saw dollar signs. They made
11 millions. He thought he would get away with it, but not
12 anymore. It is time to find him accountable, because the
13 defendant is guilty.

14 Thank you.

15 THE COURT: Thank you, counsel.

16 Members of the jury, it's now 10:47. We'll take about
17 a 10-minute break and we'll reconvene no later than 11:00.
18 Please don't discuss the case amongst yourselves or with
19 anybody else.

20 THE DEPUTY CLERK: All rise.

21 (Jury not present)

22 THE COURT: All right. So counsel, no more than five
23 minutes so Mr. Bach can get started promptly at 11:00. See you
24 in a couple minutes.

25 (Recess)

O581GAR2

1 (Jury not present)

2 THE COURT: Mr. Bach, should we bring in the jury?

3 MR. BACH: Sure.

4 THE COURT: Bring the jury.

5 (Continued on next page)

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O58Cgar3

Summation - Mr. Bach

1 (Jury present)

2 THE COURT: Members of the jury, we will now hear the
3 defense summation.

4 Mr. Bach.

5 MR. BACH: Thank you, Judge.

6 They have charged Bruce Garelick with five extremely
7 serious crimes. They claim he engaged in them knowing every
8 step of the way that what he was doing was wrong, that he acted
9 with a criminal state of mind and with a deliberate intent to
10 disobey the law. That's what they're telling you, that's what
11 they must prove, and they tell you that they've proved this
12 beyond any reasonable doubt. Ladies and gentlemen of the jury,
13 I submit to you that this is a case in which you should have
14 profound doubt, profound doubt, because Bruce Garelick did not
15 commit any crime, he did not commit any crime at all.

16 Let's start by talking about the witnesses. When I
17 spoke with you at the very beginning of this trial, I told you
18 that Bruce did not tip anybody, that he did not share any
19 confidential information that he learned on the board, I told
20 you that he purchased a small amount of DWAC stock for himself,
21 but stopped as soon as he thought he might be exposed to
22 material nonpublic information. That's what I told you on day
23 one. Not one witness has come into this courtroom and told you
24 otherwise. Sure, the government presented witnesses, but none
25 really knew Bruce and none had really anything to say about him

O58Cgar3

Summation - Mr. Bach

1 at all.

2 Andy Litinsky, he's the gentleman who was on The
3 Apprentice, the first witness you saw, lovely guy. He never
4 met Bruce Garelick, never heard his name until he became
5 involved in this case.

6 Adrian Lopez Torres. Do you remember him? He told us
7 he had one phone call with Bruce once. When he came in, he
8 couldn't even recognize him in the courtroom.

9 Marc Wachter said, yes, I was on a Skype call, he was
10 on Skype during the meeting on June 18th, but I don't recall
11 having any other interaction or dealing with him at any time.

12 The only person, the only government witness who
13 seemed to know Bruce or to have any substantial interaction
14 with him at all was Hartley Wasko. He's the investor who at
15 times invests with Michael Shvartsman. He had nothing but good
16 things to say about Bruce Garelick. He said that Bruce was
17 smart and analytical in thinking about potential investments.

18 They are trying to prove to you that someone who has
19 never been in trouble before, someone who has never taken any
20 shortcuts, but who has instead worked hard throughout his
21 career suddenly decided in the middle of 2021 to throw it all
22 away and break the law for a total of less than \$50,000 when he
23 had \$250,000 of cash sitting in his trading account and
24 \$650,000 total in value in that account.

25 Instead of bringing in witnesses, people, human beings

O58Cgar3

Summation - Mr. Bach

1 with real knowledge of Bruce and with real knowledge of what he
2 was doing and working on and thinking about in 2021, what
3 evidence are you being asked to rely upon? You're given phone
4 logs and lists of phone numbers and times of phone calls
5 without a single piece of evidence of what was said on a single
6 call. Those are mixed in with a variety of emails and text
7 messages and documents, but there are no witnesses who were
8 there in real time putting these into context.

9 Instead, you have these very good lawyers at the
10 government's table giving you their read, their interpretation,
11 their lawyer spin on these documents and telling you that's,
12 that's the evidence from which you're supposed to read between
13 the lines and determine that someone has committed these
14 extremely serious crimes.

15 They've taken the times of phone calls and documents,
16 and they mixed them together in this chronological chart, and
17 they want you to read between the lines and draw inferences and
18 adopt certain readings and interpretations. And you're
19 supposed to infer from their presentation that it was during
20 these calls that Bruce Garelick was passing tips, whispering in
21 people's ears, oh, this is happening on the board.

22 But the evidence, ladies and gentlemen, doesn't come
23 close to proving that. The most this suggests is that a phone
24 call took place at which of course it's possible that any topic
25 could have been discussed, including a tip, but it doesn't

O58Cgar3

Summation - Mr. Bach

1 prove that a tip took place. Is this the new standard? Is
2 this how we convict people of crimes in this country, with
3 charts and phone logs without witnesses to place documents in
4 context who were there in real time to invite you to make
5 guesses and mental leaps?

6 The Judge, as Mr. Shahabian said, will instruct you on
7 the law, and you should listen to him carefully. I anticipate
8 that one of the things that he will tell you is that an
9 inference is not a suspicion or a guess, it is not enough to
10 put a chart together to create the idea of suspicious
11 circumstances. What has to happen is proof that something
12 actually occurred, actual evidence and proof beyond a
13 reasonable doubt. That's a rigorous standard. It requires
14 room for no hesitation, no hesitation, no reasonable doubt.

15 MR. NESSIM: Objection.

16 THE COURT: Overruled.

17 MR. BACH: Now, we presented a witness in this case.
18 We presented someone who experienced these events in real time,
19 who was fully and thoroughly familiar with them, who was able
20 to address the documents and explain the conduct and walk you
21 through the chronology here. That witness's name was Bruce
22 Garelick. He explained to you, over several hours, how he
23 experienced these events as they unfolded and how he viewed
24 things at the time. The government had a full opportunity to
25 confront him. He was subject to cross examination. If he

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1 wasn't telling the truth, they had the opportunity to expose
2 any lie. You saw his demeanor, you will be the judges of that,
3 you will make those decisions. I submit to you he answered the
4 questions posed by both sides respectfully, and he explained
5 what happened from his perspective in a coherent and compelling
6 way.

7 But, just as importantly, what he told you was
8 corroborated by the evidence. It's backed up by the evidence.
9 He is not carrying his own water here. He is telling you what
10 happened. The evidence that you saw at this trial
11 independently corroborates what he told you happened and what
12 he told you occurred. I'm going to go over some of that now.

13 Mr. Shahabian put it very well in his very eloquent
14 summation a moment ago. He said, the question is: Does it
15 square with the evidence? Does it compare to the evidence
16 submitted at trial?

17 So I want to talk about four major aspects of
18 Mr. Garelick's testimony. Let me go over what they are. We'll
19 go over them one by one.

20 The first is Bruce told you that he helped form a
21 syndicate, but he was not sure what would happen with TMTG. He
22 helped put the syndicate together, but he had doubts about
23 where this would actually go.

24 Secondly, he testified that he assisted others with
25 investment logistics, but that assistance was based on public

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1 information, information available from public sources.

2 Third, he told you that he believed it was okay to buy
3 DWAC securities in the open market as long as the person buying
4 those securities was not in possession of material nonpublic
5 information.

6 Fourth, he told you that he purchased DWAC stock, but
7 stopped as soon as he believed he might be exposed to material
8 nonpublic information.

9 I want to spend some time on each of those points. So
10 let's start with point 1. He helped form a syndicate, but was
11 not sure what would happen with Trump Media Technology Group.
12 You heard his account, on June 18, he was asked to remotely
13 Skype into a call. Patrick Orlando was on the call. Patrick
14 Orlando was making a big sales pitch. Trump was featured as
15 part of that pitch. Mr. Garelick, at the request of Michael
16 Shvartsman, agreed to help put together a group of investors –
17 or a syndicate – to invest in this opportunity. Mr. Garelick
18 told you that he called it the Trump SPAC in his emails and
19 communications because Trump was the name that Mr. Orlando
20 touted and the one name that stood out, and it was the obvious
21 nickname for the project.

22 At the same time, Mr. Garelick testified that he was
23 personally not sure what to make of all this, that he was
24 skeptical whether there was any there-there at this point, and
25 whether anyone could really count on it. He understood he had

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1 an obligation to keep this information confidential. He signed
2 an NDA and he kept the information confidential, but he did not
3 consider the information material. He's an experienced
4 research analyst and it was not whatever Michael Shvartsman
5 thought about this opportunity, whatever Gerald Shvartsman or
6 others thought about this opportunity, from his background,
7 from his analytic point of view. It was not at all clear to
8 him based on Patrick Orlando's pitch that this added up, at
9 least not on June 18th, at least not at this early point in
10 time. From his point of view, he was hearing a sales pitch,
11 but there wasn't really anything to go on at this stage.

12 In fact, he chose, based on what he heard, not to
13 invest in the founders round. You heard all this talk about
14 this is an earthquake, everyone knows an earthquake is about to
15 happen and people are going to make a lot of money and
16 Mr. Garelick had all this greed. He looked at this and said,
17 there's not enough here for me. He did not invest in that
18 founders round.

19 Now, that was his testimony. The evidence in this
20 case supports it independently and backs it up and corroborates
21 it. Mr. Garelick had the same exact reaction that Mr. Hartley
22 Wasko did. Mr. Wasko is another sophisticated investment
23 professional. He was similarly skeptical. Look at what he
24 said.

25 "Q. And you thought it was a sales pitch and that the deal

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1 could easily not happen?

2 "A. Correct.

3 "Q. In fact, you described him --

4 MR. BACH: That's Patrick Orlando.

5 "Q. -- as cocky and confident?

6 "A. Correct.

7 "Q. But you were skeptical; correct?

8 "A. Correct."

9 MR. BACH: That's how people who spent their careers
10 in finance at Adage, when someone like Patrick Orlando shows up
11 who has never successfully combined a SPAC with a target
12 company, who has no real track record in the business, and
13 comes in and starts saying, I'm friends with President Trump --
14 from an analytic investment perspective, you don't know, you're
15 going to reserve judgment and you're going to think hard about
16 this.

17 So Mark Wasko had the same reaction. But, take a look
18 at what was being said to the world in DWAC's public filings,
19 filings with the United States Securities and Exchange
20 Commission that describe the status of DWAC at this point in
21 time. They want to tell you, the government wants to tell you,
22 the prosecution wants to tell you, oh, everyone knew this was
23 Trump, this was just because Patrick Orlando said, you know, I
24 know Trump, I've been to Mar-a-Lago, I've seen the golf course,
25 I've done Bene and I've approached him. They want to tell you

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1 that that means that DWAC was on a rollercoaster ride to
2 success.

3 Look at what DWAC is telling the SEC and the entire
4 investing public. At this point, this is in July, this is
5 after the June 18th meeting. This is what they say. We have
6 not selected any specific business combination target and we
7 have not, nor has anyone on our behalf, engaged in any
8 substantive discussions, directly or indirectly, with any
9 business combination target. No one from DWAC had yet set foot
10 to talk about DWAC in the Trump camp. This is ground zero.
11 This is not material. This, at this point, is a wish that some
12 guy has a personal connection and some prior dealings, and now
13 we're going to shift to a new company and a new entity, and
14 we're going to hope that that gets some traction. This is what
15 they're reporting officially to the public and the United
16 States Securities and Exchange Commission, and it's exactly
17 what Patrick Orlando is saying to Mr. Garelick.

18 If we look at Government Exhibit 416, we have had no
19 substantive discussions. You've heard, there's no dispute
20 about this, you've heard that --

21 Can we take that down, Ms. McFerrin.

22 One of the things Michael Shvartsman does here is he
23 says, you know what, I'm going to pay a little bit more than
24 you're asking me, Mr. Orlando, I'm going to pay 20 percent more
25 for my founders shares, \$5 instead of \$4. I'm going to ask you

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1 give that more expensive option to everyone in the syndicate
2 that I've formed. Why? Because if I thought this was clearly
3 a Trump thing and was going to go there, why would I pay the
4 extra dollar? Because they all knew at this point, this point,
5 this is ground zero, that the hope is that whatever DWAC will
6 prove to be in the future may be able to do a little better
7 then Bene. Remember, Bene had utterly failed to get anywhere
8 with Trump, despite all these LOIs and all these documents,
9 Bene went nowhere with Trump. The idea that DWAC is going to
10 get another foot in the door is complete speculation at this
11 point. That's why there's a negotiation for a \$5 option, a
12 more expensive option, because everyone understood that there
13 was a good chance this was not going there at all.

14 Now, take a look at the exhibit Mr. Shahabian just
15 showed you. Can we pull up Government Exhibit 742, the bottom
16 of page 5. There you go. This is Mr. Postolnikov writing, I
17 just hope the merger is with you know who, otherwise won't get
18 much traction. That's obviously a reference to Trump. And how
19 does Mr. Garelick respond? He doesn't say, of course, of
20 course it's going to work, of course we're on board to get to
21 Trump. No. He says, if the merger is not the plan A, we'd
22 exercise our redemption rights. So that is the \$5 purchase
23 opportunity that they bought. The idea that Patrick Orlando
24 can promise something because he has a Bene LOI that has never
25 had any traction and a letter of intent, we went over the

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1 language in some of those letters of intent on the first day of
2 testimony in this case, and I highlighted some of the terms for
3 you. It's no commitment, no commitment. You might recall this
4 from day one of the trial, an LOI is just a placeholder that's
5 subject to and conditioned upon the negotiation and execution
6 of a definitive agreement. That's the real play here. That's
7 the real play here. It's not the LOI, it's, is there going to
8 be a merger agreement. That's the real play.

9 With respect to these LOIs, Mr. Litinsky - he was not
10 my witness, he was the government's witness - he explained to
11 you that Trump didn't take these LOIs all that seriously, he
12 ignored the exclusivity. He was talking to other parties down
13 to the last day in October 20th, someone from Gettr called him,
14 and that very day Mr. Litinsky had to go meet with Donald Trump
15 to see if this was going to go forward at all. It went down to
16 the last minute when Mr. Litinsky walked out of the room. You
17 can read his testimony, and didn't know if Trump was going to
18 sign with DWAC or not.

19 So Mr. Garelick, as an investment professional, that
20 summer in June at the time that he's forming this syndicate and
21 going forward - remember, he hasn't joined the board yet,
22 that's not until September - is not looking at this yet as
23 something that you could bet your house on. He's not looking
24 at this as having traction yet. This is a good idea. If it
25 works out, great. We all have a lot of good ideas. But that's

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1 how he sees it, and that's corroborated by this other evidence,
2 including how Mr. Wasko sees it, including how it's reported in
3 very important documents filed with the SEC.

4 Let's go to the second aspect of Mr. Garelick's
5 testimony that I want to discuss with you, that he assisted
6 others with investment logistics based on public information.

7 And by the way, there's one thing to tip people.
8 Tipping is when you tell someone something they're not supposed
9 to know and it's based on confidential information, but when
10 you tell someone something that's in the newspaper or that
11 you've seen on TV, that's not a tip. That's already in the
12 public domain. That's public information. In this case, sure,
13 you saw a lot of emails and texts where Mr. Garelick says to
14 some of the people in the syndicate, the IPO starts tomorrow or
15 warrants are trading at this amount, this is \$10 is the average
16 price. Any investment professional anywhere in the United
17 States knew exactly the same thing and had access to the same
18 information. That's not a tip, that's sharing public
19 information.

20 So what corroborates? What's the evidence that backs
21 up and supports Mr. Garelick's testimony in this regard? Well,
22 first of all, most, most of the assistance, not all of it, but
23 most of the assistance he provided was before he had any
24 confidential DWAC information at all. Remember, he didn't go
25 to a board meeting until September 21. And no one was

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1 whispering in his ear about anything that was going on at DWAC
2 before then.

3 SPACs were new in 2021, they were booming, and there's
4 lots of ways to invest in SPACs. You heard founders shares,
5 class A, class B, units, warrants, shares. There were lots of
6 ways and not everyone has done a SPAC before, this is new. So
7 Mr. Garelick is translating the public information that's
8 available in the filings, the public filings that DWAC has made
9 to say, here's the different warrant classes, here's this,
10 here's that.

11 If you take a look at some of those public filings,
12 you'll see that they're very complex documents.

13 Can we pull one up.

14 This is the prospectus. These are in evidence. These
15 are pages of the prospectus where the details and nuances of
16 some of the warrants are being spelled out. Someone has to
17 read this and break it down. A lot of people are busy. If
18 Michael Shvartsman is busy and he doesn't want to read this and
19 figure it all out, he'll call up Mr. Garelick. The point is,
20 this is not confidential information misappropriated from a
21 company, this is public information gleaned from a public
22 document.

23 Let's take a look at some of the information that you
24 see Mr. Garelick conveyed. These are some texts that he sends
25 to -- this is just one example. You can look at all the

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1 evidence when you get back in the room. Mike, note, DWACW
2 warrants started trading today. Everyone knows that, it's
3 public, the markets are open, warrants are trading. That's
4 like saying the Yankees are playing today. Traded just below
5 50 cents. That's like saying the score is 2 to 1. That's
6 public. That kind of ticker information, that's information
7 that's known to everybody. He gives him Ben Reed's phone
8 number at R.F. Hutton. This is not a tip. This is on
9 September 30th. It's not like Bruce Garelick learned something
10 on September 30th and he said, aha, I now have an important
11 piece of information that I learned from the board, so now I'm
12 going to write these texts. Michael Shvartsman, no.

13 What prompted this was not any secret information that
14 Bruce Garelick learned, it's the warrants are freely trading,
15 this is the day this is happening, so I'm letting you know
16 this, not because I received confidential information on the
17 board, but because this is what's happening in public in the
18 public domain. Any broker, any financial professional in the
19 United States could have given the same information to Michael
20 Shvartsman. You don't have to be on the board of DWAC to do
21 this.

22 Now, the government has presented lots of documents in
23 this case, and they've sprinkled throughout that chronological
24 chart that I talked about that puts them together with the
25 phone calls. Take a look at those documents. You're not going

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1 to see a single one, not a single one that shows Bruce Garelick
2 disclosing any confidential DWAC board information to anybody
3 else. Those communications concern public information and
4 they're about the logistics and mechanics of the trading.
5 That's what they're about. They're not about information that
6 makes this a good or bad deal.

7 Let's talk about the third aspect, that he believed it
8 was okay to buy DWAC securities in the open market as long as
9 people were not in possession of material nonpublic
10 information. That was his state of mind. That's what he
11 thought at the time. Again, he did not regard this, you heard
12 him, in these early stages before it there was further traction
13 between these two companies, before they started talking to
14 each other, DWAC and TMG, before they start talking to each
15 other, he did not believe there was a material relationship
16 here. That was his state of mind and that's what was reflected
17 in that July SEC public filing. Those two companies weren't
18 even talking to each other yet. He thought that, at that
19 point, this was tenuous and it was okay. That was his state of
20 mind.

21 The evidence in this case corroborates about that.
22 There are many emails and texts about trading in the open
23 market. No one's hiding the idea that he, that Michael
24 Shvartsman, you know, they're going to trade for warrants or do
25 these other things in the open market. They spoke openly with

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1 Ben Reed at E.F. Hutton about it. They said, let's set up
2 Michael's account.

3 This is a note that Ben Reed wrote to himself about
4 Michael's account. Split the baby in case it drops in the open
5 market and he wants to buy the unit then. You heard a lot
6 about whether Ben Reed knew at the time that Bruce Garelick was
7 a director. Well, Bruce Garelick assumed, assumed that someone
8 in Ben Reed's position would of course know that he was on the
9 board of directors because Bruce, as Ben Reed explains, it's
10 part of his job before he starts working with customers, to
11 familiarize himself with the public filings and documents.

12 This is Ben Reed's testimony.

13 "Q. And to do that, you don't go over the wall into the
14 investment banking side, you look at the public documents?

15 "A. Correct.

16 "Q. And that would include the prospectus?

17 "A. Correct."

18 MR. BACH: These are the things that Ben Reed looks
19 at. Then let's look at what's in the prospectus that Ben Reed
20 typically looks at. It says right there in the prospectus,
21 public information, public to the world.

22 Now, of course, people, you know, you've heard about
23 NDAs and LOIs and prospectuses. These are documents -- let's
24 be real. A lot of these are like rental car agreements. No
25 one reads them line for line and goes, sits down, and so is

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1 them. Sometimes you get on your phone, you get a new app and
2 there's a contract, people just accept and say agree. I'm not
3 saying anyone does this. What I'm saying is when Bruce
4 Garelick was involved in these phone calls with Ben Reed, he
5 didn't think, oh, this guy's never going to know I'm a
6 director. This is public information to a professional like
7 Ben Reed, who makes -- is his responsibility to review these
8 public documents. And it's quite public that Bruce Garelick is
9 a director. No one is trying to sneak one past the goalie
10 here. What you have is a state of mind that it's okay to trade
11 at this point. At this point, it's okay.

12 Take a look at what Bruce Garelick said to Justin
13 Friedberg, his fellow employee. As Mr. Shahabian put it, this
14 is the employee that Bruce Garelick didn't get along with so
15 well or didn't like so much. But nevertheless, Bruce Garelick
16 has no qualms saying to him that he traded in the open market.
17 I was very limited in what I could buy. He's not hiding this.
18 Justin Friedberg is not someone he would share a confidence
19 with. In real time, as he experienced it, Bruce Garelick
20 thought this was okay. As soon as he thought it wasn't okay,
21 he restricted himself. He restricted himself. I'm going to
22 talk more about that as we go on.

23 Patrick Orlando -- in fact, no one at DWAC ever said
24 to Bruce Garelick or Michael Shvartsman or anybody, it's not
25 okay to trade in the open market. DWAC had no guidance. When

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1 Mr. Melley -- he was the gentleman from FINRA who knew a lot
2 about boards of directors and he knew a lot about public
3 companies and he introduced you to some terms. I asked him if
4 a lot of public companies have guidance and training for their
5 directors and officers so that these types of situations can be
6 avoided, and he said yes. He said there were such things as
7 blackout periods, which is when a compliance officer or a
8 lawyer or someone in a position of that type of authority would
9 send out what's called a blackout notice, and say, blackout,
10 you cannot trade, and when it was okay to trade, they would
11 lift the blackout notice. No one was doing that at DWAC.
12 Bruce had never been on a -- yeah, he was good at picking
13 stocks, he was an investment professional at a hedge fund. He
14 had never been on a board of directors before. And there was
15 no guidance for the directors in this regard.

16 When he did communicate -- let's take a look at what
17 happens when he raises some of these questions with Patrick
18 Orlando. Here on July 13th, Bruce Garelick writes to Patrick
19 Orlando, how soon after the IPO will the warrants freely trade?
20 Patrick Orlando writes back in all caps, public warrants are
21 freely trading. No one says to Bruce, what on earth are you
22 talking about? You're sitting on confidential material
23 nonpublic information, you can't trade, we'll give you guidance
24 with the blackout period. No, Bruce's state of mind at this
25 point in time, his good faith belief is that this is okay.

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1 Let's take a look at the forth aspect of
2 Mr. Garelick's testimony. He purchased a small amount of DWAC
3 stock, but stopped as soon as he believed he might be exposed
4 to material nonpublic information.

5 Now, you just heard an argument that this was a
6 carefully calculated plan to buy \$50,000 worth of stock where
7 he spread it out to avoid detection so that it wouldn't -- it
8 was cold and calculated, the steps a criminal takes to hide his
9 tracks, you spread it out so no one will know and you slip
10 under the radar. Why would someone engage in that kind of cold
11 and calculated plan to make \$49,000 or why would they throw
12 away their career when they already have plenty of money. What
13 Mr. Shahabian is ignoring is that when you looked -- when I
14 showed you the other stock purchase appearance in
15 Mr. Garelick's accounts, I showed you Sumo Logic, I showed you
16 one other company. He spread them out in the same way. That's
17 how he invests, he spreads them out because he understands the
18 price of stock can go up one day, go down the next, and if you
19 spread them out, he gets the benefit of an average price.
20 That's what he always does. It's in the records. What, was he
21 trying to hide the trades in those two other companies? Were
22 they part of another dastardly plan? Who was he conspiring
23 against there? No, this is how he always trades. This is
24 innocent behavior. He's trading DWAC shares the same way he
25 always trades, in small increments for a small amount.

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1 And he stopped. It's undisputed that he stopped on
2 September 23rd. Mr. Garelick explained that, at that point,
3 you know, I did not know whether there was a reality to this, I
4 followed as best I could. Even on the September 21st board
5 meeting, when I saw the Trump page in the board packet, there
6 was nothing here that I hadn't seen before in an Axios article
7 from five months back. I didn't know whether there was any
8 traction on September 21st, but on September 23rd, there's a
9 drumbeat of text messages that afternoon about public
10 announcements and other things, and I stopped because at that
11 point, I knew my obligations, and now we're reaching a terrain
12 where this could start to have traction. And that's what he
13 testified to. What other explanation have they given you about
14 why he stopped? He didn't run out of money. He had \$250,000
15 in cash sitting in that account that he could have used to buy
16 more DWAC stock.

17 Can we show the money in his account.

18 Do you see, ending balance, \$250,000. You just saw,
19 Mr. Shahabian showed you in his summation - can we pull up
20 Government Exhibit 511 - this text on the afternoon of
21 September 23rd. Team, I just want to clarify that there is no
22 announcement yet scheduled. TMG expressed an interest in
23 announcing next week, but it has not been confirmed. So there
24 is active discussion about a public announcement. This is now
25 getting very real. If you look at the time of this, this is at

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1 2:23 in the afternoon on September 23rd. You'll see that there
2 are WhatsApp texts piling up on that afternoon. People look at
3 their WhatsApps at different times of the day, but when you
4 start to see a number like 5 or 6 piling up, that's when you
5 might look at your WhatsApp. At this point on September 23rd
6 and the days that followed, things started to progress. The
7 companies started talking in an active way moving towards a
8 data room, due diligence, and Mr. Garelick said no more, that's
9 it.

10 They quibble and say, well, you know, on September
11 22nd, maybe he had information on that day, but this September
12 23rd, you know, then he crossed the line. That's silly.
13 That's silly. All of his trades, except one, come well before
14 September 23rd. Is he going to just violate the law in
15 flagrant disregard to invest another \$1,500 or whatever he did
16 on September 23rd? Is he going to say, you know, I'm so
17 greedy, I'm going to place just one more little small trade on
18 September 23rd even though I know I crossed this line? No.
19 He's a busy man, he's actively involved, he's following this as
20 best he can, and on September 23 he comes to understand it's no
21 longer appropriate for me. This is it, I'm on the board, I
22 have fiduciary responsibilities, I'm an investment
23 professional, and he stops trading. And they want to say
24 things were heating up before then, it was material before
25 then, but did just wasn't from his point of view.

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Summation - Mr. Bach

1 Can we pull up the board packet he got.

2 This is where things stood in Bruce Garelick's mind.

3 This is how he saw them in his head just two days before

4 September 23rd at the time of the board meeting on September

5 21, that they have nothing, no information, no traction with

6 Trump Media Group. What they've done is created a mirage

7 because they've lifted the text from a public information

8 source published five months before and pasted it in.

9 Mr. Garelick got that Axios article back in June and now it's

10 September, he's like this is more or less the same information

11 that I saw months ago. No progress is being made. They say,

12 oh, well, if you look at around September 22nd or 23rd, there

13 was an LOI. Yes, but that LOI was never sent to Mr. Garelick,

14 he didn't study its terms, he was not given -- no one thought

15 it was important enough at the time to send to members of the

16 board. This is not a merger agreement. This is an LOI that

17 says, "no commitment." It's around this time that these things

18 are heating up that he stops trading and doesn't place another

19 trade.

20 His state of mind, when they cross examined him, one

21 of the lines of cross examination was, you're a smart guy,

22 you're a brilliant mind, you've read all the evidence in this

23 case, you've consulted with your lawyers, you've studied this,

24 you're able to craft your testimony accordingly. But take a

25 look at GX 750.

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1 Can we pull it up.

2 This is not something that Bruce Garelick made up for
3 purposes of this trial, this is not an argument that he
4 recently concocted to defend himself, this is not something a
5 lawyer whispered into his ear. This is what he said on October
6 22nd, 2021. "I had to restrict myself a month ago." A month
7 ago, October 22, back around September 22nd or 23rd, "due to my
8 involvement on the board of directors of the SPAC." That was
9 his state of mind at the time. It is corroborated, it is
10 squared with the evidence, it is backed by the evidence. It is
11 a contemporaneous document. It is a window to what he was
12 thinking at the time. It is not a lawyer's interpretation or
13 spin after the fact.

14 Mr. Shahabian, in his closing, talked a lot about the
15 end, you know, how Mr. Garelick said, well, it wasn't really
16 material until the end of October. That's a red herring.
17 That's a red herring. Mr. Garelick understood that it was
18 inappropriate and prudent for him not to buy anymore shares
19 when things started to heat up on or around September 23rd, and
20 he stopped, and he restricted himself. Why did he do that?
21 Because he follows the law, because he follows the rules.
22 That's what he does. He's a skilled investment professional.

23 Just talked to you about Mr. Garelick's testimony and
24 how it squares with the evidence and how it's backed up by the
25 evidence, but I want to talk about other evidence because there

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1 is very compelling evidence in this case well beyond
2 Mr. Garelick's testimony to show that he was not involved in
3 any criminal scheme or conspiracy, that there were other
4 extraordinarily innocent explanations from what occurred.
5 Don't get me wrong, I'm going to come to what I think was
6 insider trading, pretty much indisputable insider trading at a
7 certain point in this case, but for much of this there are
8 explanations that don't depend on the existence of any crime.

9 What I really want to focus on here and kind of have
10 as a guide for you are the charts.

11 By the way, before I get to that. I obviously don't
12 have any burden of proof, I don't have to prove anything beyond
13 a reasonable doubt, I don't have FBI agents to help me, I can't
14 convene a grand jury to do my investigation, I don't have a
15 burden of proof. But nevertheless, the evidence in this case
16 that has come out and has been presented here supports a very
17 different scenario of what occurred, and that is another reason
18 that you should have profound doubt about the accusations that
19 have been made.

20 So I want to just talk, and I'm going to talk with
21 repeated reference to the charts of the trading activity that
22 Mr. Melley made.

23 Can we pull up Government Exhibit 930 just so everyone
24 sees what I'm talking about.

25 These charts, and Mr. Melley made these charts for

O58Cgar3

Summation - Mr. Bach

1 Mr. Garelick and various other individuals. I think these are
2 some of the most interesting pieces of evidence in the case and
3 that they're very helpful. I'm going to talk about them. When
4 you go back in the jury room, you are authorized to request any
5 exhibit in this case that you want to see for whatever reason.
6 I just think 930 is a helpful guide because it kind of takes
7 the whole case and shows you key dates and key conduct. I'm
8 going to use that to orient part of my discussion here to show
9 you what I think the evidence shows in this case. It doesn't
10 show Mr. Garelick whispering tips and committing crimes and
11 throwing his career away for \$49,000. That's not what it
12 shows. Let me show you what it shows or at least makes a very
13 compelling case for.

14 Let's take a look at Michael Shvartsman's trades.
15 This is, of all the people in this case, Mr. Shvartsman is the
16 one who has the most access to Bruce, right? He's Bruce's
17 boss, he works with him every day. If there's one individual
18 that Bruce is close to in the case, I mean, he worked remotely,
19 but he interacted with, is Mr. Shvartsman.

20 So let's take a look. What are the days on which
21 Mr. Shvartsman buys warrants? There are three days. There's
22 Friday, October 1st; and then there's a weekend, that's the 2nd
23 and 3rd, so the markets are closed, you don't see that; then
24 there's October 4th and 5th. He buys those warrants and then
25 he's done. He's done. Okay. There's no more trading

O58Cgar3

Summation - Mr. Bach

1 activity, no more buying activity before the public
2 announcement by Mr. Shvartsman.

3 Now, you know from the evidence in this case, and it's
4 undisputed, although these trades and transactions took place
5 not only on Friday, October 1st, but on Monday and Tuesday the
6 following week. They all flow from an order that was placed on
7 October 1st. They all flow from a standing order, get me --
8 buy me 2 million warrants. So they happen to unfold on
9 different days, but we're really talking about an October 1
10 event.

11 Can we show what Ben Reed at E.F. Hutton wrote to
12 himself.

13 This is on October 1st. See at the top, October 1st,
14 Ben Reed writes, wants me to buy him 2 million DWAC warrants,
15 50 cents, don't run it up, over the course of the next few
16 weeks. So this is a standing order on October 1st.

17 Can we take a look at Ben Reed's testimony in this
18 case. He was asked:

19 "Q. And those trades all stemmed from an instruction that
20 Michael Shvartsman gave you on October 1st to buy 2 million
21 warrants; correct?

22 "A. Yes."

23 MR. BACH: Now, why October 1st? What is so special
24 about October 1st? Is it because Bruce Garelick learned some
25 tidbit of juicy confidential information on the DWAC board and

O58Cgar3

Summation - Mr. Bach

1 tipped Michael Shvartsman and whispered it in his ear? No.
2 October 1st is opening day. It's virtually -- I think
3 September 30th is the official opening day, but October 1st is
4 really one of the first days. If you're someone interested in
5 pursuing a warrant investment strategy, that's the first day --
6 one of the first days you can do it. Michael Shvartsman -- I'm
7 going to go over this in a minute -- had been waiting a long
8 time to buy warrants. That was his longstanding plan. It was
9 a preconceived plan. It was not something that, on October 1,
10 on the spur of the moment with a tip from Bruce Garelick he
11 suddenly decided to pursue.

12 I want to show you a couple of exhibits that
13 Mr. Shahabian just showed you in his closing.

14 Can we pull up Government Exhibit 962. This might not
15 be the right exhibit. Go back a page.

16 If you look at this green text, they said this was
17 Bruce Garelick conveying tipping information to Michael
18 Shvartsman. I have a DWAC board meeting tomorrow at 12:30, I
19 recommend starting to buy more DWACU stock.

20 First of all, these aren't even warrants, this is
21 units. This board meeting hasn't even occurred yet. Bruce
22 Garelick hasn't even gotten the board packet yet. He doesn't
23 know anything of any content related to the board meeting. He
24 doesn't have that information. So there's nothing to tip
25 Mr. Shvartsman about. This is all public information.

O58Cgar3

Summation - Mr. Bach

1 Can we pull up Government Exhibit 964.

2 This is on September 30th, the day before October 1st.

3 Bruce Garelick writes to Michael Shvartsman, note, DWAC

4 warrants started trading today. That's public information.

5 Again, that's like saying the New York Yankees are playing

6 today. That's what all this is. You've asked me to remind

7 you, you wanted to trade warrants, that's been your goal and

8 desire since an early stage? Guess what? It's public

9 information, it's going to start, it's not a tip, there's no

10 confidential information being conveyed here.

11 Now, what I've been telling you is that Mr. Shvartsman

12 was interested in warrants independently of any type or

13 confidential information from Bruce, no such thing happened.

14 (Continued on next page)

O581GAR4

Summation - Mr. Bach

1 MR. BACH: And the evidence in this case makes that
2 overwhelmingly clear. Let's take a look at some texts.

3 Okay. These are texts between two very close friends,
4 Patrick Orlando and Marc Wachter. And the date of them is
5 June 17th. That's one day before the June 18th meeting which
6 marks Bruce Garelick's first involvement in anything having to
7 do with DWAC. So before Bruce Garelick is around to tip
8 anybody or has even, you know, stepped a toe in the water of
9 this whole mess, Patrick Orlando and Marc Wachter are talking
10 to Michael Shvartsman about warrants, and warrants share
11 packages, from time one. If June 18 is time one, this is from
12 minus time one. And what does Patrick Orlando tell his friend
13 Marc Wachter? By the way, I can sell warrants and warrant
14 share package cheaper to Mike. Marc Wachter writes back: I'm
15 setting up a meeting for tomorrow. That warrant plan was
16 preconceived from an early stage. It had nothing to do with
17 any information that Bruce Garelick learned at any time or
18 conveyed to Michael Shvartsman at any time.

19 This comes up on June 14th. There's a chain. This is
20 between Bruce and Michael. This is four days. Michael's been
21 talking to Marc Wachter at this time about this potential SPAC
22 investment and about warrants. Bruce doesn't know about DWAC
23 yet. He doesn't know what this relates to. And he's asked,
24 "SPAC warrant arbitrage?" "No simple answer. Best we
25 scrutinize the SPAC founders share legal documents to

1 determine. Best that we look at the public information to
2 figure it out." The public information, the legal documents,
3 that's where the warrant logistics are spelled out. He doesn't
4 even know this relates to DWAC yet, but the important point
5 here is that on June 14th, four days before the June 18th
6 meeting, Michael is all ready. He's like a—he's like a bull
7 at a rodeo ready to go out the gate. He wants to do warrants.
8 Warrants, warrants, warrants, from day one. Please. I want to
9 do warrants. Okay? For reasons having nothing to do with
10 Bruce Garelick.

11 It's corroborated by what the witness Hartley Wasko
12 testified to at trial. This is Mr. Wasko. Again, this is the
13 government's witness, not my witness.

14 "And what, if anything, did you learn about investing
15 in DWAC warrants specifically?"

16 "Well, we knew that with DWAC, there were warrants
17 that were trading separately, and I know that Michael purchased
18 some or invested in some, and, you know, floated the idea that
19 it was a smart and a good way to add onto the position."

20 Okay? This is Michael's play. This is what he wants
21 to do.

22 And at some point he asks Bruce about warrants. And
23 Bruce is a modeling nerd. There's no dispute about that at
24 this trial. I think both sides will stipulate that
25 Mr. Garelick is a modeling nerd. I don't know if that's a good

O581GAR4

Summation - Mr. Bach

1 or a bad thing. But he says, What do you think about warrants?
2 And Bruce, who's been to business school and spent his years in
3 investment, says, Warrants are like options. What you do is a
4 Black-Scholes analysis. You look at the terms of the warrant
5 and decide the value, and there's a standard calculator for
6 doing that. And I will punch the numbers. I'll go up on the
7 internet and punch the numbers in the calculator. And that's
8 public information. That is not—that is not based on any
9 confidential information that anyone gets from DWAC. And the
10 government makes a big point, well, you know, how do we know
11 that really happened? Mr. Garelick can't show any, you know,
12 notes he took of the calculation he performed. Well, you know,
13 that's not surprising. That calculation is the calculator on
14 the internet. You punch the numbers in, you see what the
15 result is, and that's what it is.

16 But let's go back to Government Exhibit 930 and look
17 at Michael's trades, because I think this is something that's
18 very important.

19 Government Exhibit 930 is that there is no reason on
20 earth for Bruce Garelick to be tipping Michael Shvartsman at
21 all. Michael Shvartsman makes basically one trade here, on
22 October 1st. That's it. It carries out over a few days. That
23 trade is prompted by opening day of warrant trading. And he
24 doesn't trade again. That was his investment. Why would he be
25 talking to Bruce Garelick on the phone? You know, you saw that

O581GAR4

Summation - Mr. Bach

1 chart that has all those little phone calls, Michael
2 Shvartsman, Bruce Garelick. They weren't talking about
3 Emcompay, they weren't talking about—they were talking about
4 DWAC. Why? He's done. He's not making another investment.
5 He's not thinking about it. That was his plan, that he
6 preconceived from day one: I'm going to buy a chunk of
7 warrants here. There's no reason for them to be discussing
8 DWAC confidential inside information because Michael Shvartsman
9 is not investing again. The whole theory that Bruce is tipping
10 Michael makes no sense, because Michael is not participating.
11 He's done. And all this is just, first time I can trade
12 warrants, I'm going to do it. Now I'm going to sit on the
13 sideline. Michael Shvartsman is a one-shot Johnny.
14 October 1st. And when you're a one-shot Johnny, you don't need
15 to be tipped on other days.

16 So he's done with warrants on October 5th. And you
17 don't need to have any crime or any conspiracy or any attempt
18 to disobey the law to understand that. The evidence explains
19 that very well. And the evidence—now let's take a look at
20 Gerald Shvartsman's trades. Let's go to that chart.

21 Gerald starts to trade in warrants just when his older
22 brother's trades tail off, okay? On October 7th and 8th, he's
23 following in his brother's footsteps. Why is he following?
24 Well, you heard from Mr. Melley that there's issues of
25 liquidity in the market. There are only so—for every warrant,

O581GAR4

Summation - Mr. Bach

1 you need to have a buyer and a seller, and Michael Shvartsman
2 was buying a lot of warrants. He was buying 2 million
3 warrants, and when Michael Shvartsman was doing that, you know,
4 there's only so many warrants to be had; you know, monopolizing
5 the availability or much of it in the market. And you know how
6 brothers are. He's not telling Gerald to do this until he's
7 done, till he's taken advantage of the liquidity. And once
8 he's done with that, he's like, okay, Gerald, now you go ahead
9 and buy your warrants too. I'm doing it. I think it's a good
10 idea. You go ahead and do it. This is not based on
11 confidential inside information. This is based on an idea that
12 warrants are a smart buy here, okay?

13 And you can see, on the evening of October 5th,
14 when—let's talk about Eric Hannelius. October 5th, when
15 Michael is done with his warrants, he has a call with Eric
16 Hannelius. This is on October 5th. That's October 5th.
17 Michael's done. He calls Eric Hannelius. Now let's take a
18 look at the Mr. Melley charts for Eric Hannelius.

19 You can see that on October 6th and October 7th, Eric
20 Hannelius switches to a warrant strategy, after talking to
21 Michael, and picks up where his business partner, you know, has
22 left off. That's the explanation for what happens on those
23 days.

24 And while we're on this chart, let's just talk about
25 the September 13th trade in units that Mr. Hannelius made.

O581GAR4

Summation - Mr. Bach

1 That's not based on any tip by Bruce Garelick. Bruce Garelick
2 is not on the board. He's not attended a single board meeting
3 on September 13th. He doesn't have any information to tip.
4 The first board meeting is not until September 21. And
5 Mr. Hannelius is a founders round investor. He met with
6 Patrick Orlando, just like Mr. Garelick did. There's not one
7 tidbit of information that Bruce Garelick knows that Eric
8 Hannelius doesn't know on September 13th. Okay? There just
9 isn't.

10 And the only thing that Mr. Garelick knows is how to
11 read the public statements to talk about some of the logistic
12 and mechanical features of how you place these trades. How do
13 you buy units, how do you buy warrants, that's public
14 information. But he's not on the board. He doesn't have
15 confidential information to tip. So I think the bottom line
16 is, when you look at what's happening at this stage in time, in
17 early October, these trades are—the evidence—there's
18 compelling evidence to suggest that these trades are not the
19 result of a crime or a conspiracy or any kind of
20 dastardly—it's—they're based on Michael Shvartsman's interest
21 in warrants and his desire, as soon as he's done, to let his
22 friend Eric Hannelius and his brother, you know, invest in the
23 same way. Okay? But the bottom line is this is not based on
24 any tip by Bruce.

25 Okay? Now let's talk about the rest of October,

O581GAR4

Summation - Mr. Bach

1 because I think here's where the rubber meets the road.

2 And for those of you interested in beyond a reasonable
3 doubt, in seeing a real crime, now we're getting there, okay?
4 But it doesn't involve Bruce Garelick. Let's go back to Gerald
5 Shvartsman's chart.

6 Look at this. I've just told you about his warrant
7 trading on October 7th and October 8th. Out of the blue, on
8 October 18th, he places a trade. Ten days later. Separate
9 from his earlier trade. A trade like this that's made out of
10 the blue cannot be explained as part of a preconceived plan or
11 strategy that dates back. It has to be prompted by something,
12 by a tip. This is evidence of willful, knowing, deliberate
13 insider trading. You'll remember there's evidence in this case
14 that on October 18th, the day of this trade, Gerald speaks to
15 two of his employees—you met them, Adrian Lopez Torres and
16 Netanel Suissa—and tells them, I got news. There's going to
17 be a merger, in two weeks. DWAC. And those two gentlemen took
18 the tip from Gerald and went ahead and bought shares on their
19 own. And I submit to you what Gerald gave them was a tip and
20 that he had a source of information. And the question is, who
21 was the source? I'm going to talk about that. I'm going to
22 talk about that. But I'm going to tell you right at the outset
23 that there's strong, solid, irrefutable proof that the source
24 was not Bruce Garelick. How do we know that? We know that
25 because Gerald is not simply tipping about DWAC; he's also

O581GAR4

Summation - Mr. Bach

1 tipping about Bene. His source knows about Bene too. His
2 source is not just a DWAC board of—can't be someone who only
3 knows DWAC's board; his source is someone with knowledge at a
4 more fundamental level about more than one SPAC that Patrick
5 Orlando is operating at that time. How do we know that?

6 Can we show Mr. Lopez's testimony.

7 Do you remember Adrian Lopez took the stand at the end
8 of a courtroom day and I had to question him fairly quickly so
9 we could all get out by 5:30? But we showed you documents, and
10 on two days after Gerald told him to go buy DWAC, he said,
11 "Told me to go buy Bene."

12 "The ticker symbol that Gerald shares with you on
13 October 21st is Bene, correct?"

14 "Yes."

15 And can we show the texts. The texts.

16 These are texts that Mr. Lopez shares with his father.
17 You see the transcript of Mr. Lopez's testimony on the left of
18 the screen. Next potential investment. That's the Bene
19 warrants, correct? This is what Gerald told me now. And look
20 at those texts. *Proxima potencial*. My bad Spanish. This is
21 what Gerald is telling me now. And you'll see that if you look
22 closely at the texts between Adrian and his father. I don't
23 have them here. He's telling his father, same story, same
24 story as with DWAC. So Bruce Garelick doesn't have—couldn't
25 tip on Bene any better than I could tip on Bene, or anyone

O581GAR4

Summation - Mr. Bach

1 else. He had nothing to do with Bene. This source is not
2 Bruce Garelick. What explains what Gerald does out of the blue
3 on October 18th is not Bruce Garelick.

4 Now I told you in my opening—and by the way, you
5 didn't hear a word about this in the government's closing
6 argument. You didn't hear any explanation for how this Bene
7 tip came about. He just said, Marc Wachter is not a tipper.
8 That's what he said to you. But how does he explain this?

9 Now I told you in my opening statement that there were
10 other people in this case that you're going to hear about and
11 that I was going to tell you more about at the end of this
12 trial, people who were close friends and buddies, people who
13 were very tight with each other, people who shared secrets, and
14 confidences, people who trusted each other in unusual ways.
15 And there are a number of those people with those relationships
16 here. Okay? And I'm going to talk about some of these
17 relationships.

18 Let's start with the relationship between Marc Wachter
19 and Patrick Orlando. We know that Marc Wachter is desperate
20 for money. He's tight on funds. You met him. You saw him.
21 And that he's hoping that Patrick Orlando is going to find a
22 way, a work-around to pay him off the books. And they have a
23 friendship or a relationship of trust in which they engage in
24 certain illegitimate things. Marc Wachter, with Mr. Orlando's
25 knowledge, is promoting securities without a license. They're

O581GAR4

Summation - Mr. Bach

1 finding a way to—if he can pay him for this or make him
2 get—get him a payment on the side, they're going to work it
3 out. Marc Wachter and Patrick Orlando, no one knows more
4 inside information about DWAC than Patrick Orlando. He is
5 DWAC. He's the guy. And no one knows more about Patrick
6 Orlando than Marc Wachter. Let's see how often they talk.

7 And by the way, the government didn't show you these
8 phone records. They showed you a lot of phone records. But
9 here's the pattern of communication between Patrick Orlando and
10 Marc Wachter in October.

11 Okay? So can we go back to that social circle that I
12 showed a moment ago. Who else is in this circle? Well, Marc
13 Wachter and Gerald Shvartsman are very close friends. They've
14 known each other over ten years. Could we show the testimony.

15 This is Marc Wachter:

16 "Q. How do you know Gerald Shvartsman?"

17 "Gerald's been a good friend of mine for at least ten
18 plus years. He's also an insurance client of mine. And just a
19 very close friend."

20 Let's go back to the social circle.

21 Michael and Gerald are as close as you can get.
22 They're brothers. And Michael and Gerald are close with
23 someone named Anton Postolnikov. That's someone who Michael
24 recommended for his founders syndicate. And there was—you
25 heard Mr. Wachter explain to you that when he met

O581GAR4

Summation - Mr. Bach

1 Mr. Postolnikov, he and Patrick Orlando began courting him and
2 they were interested in making him, you know, their new best
3 friend. Why? Not hard to know why. Mr. Postolnikov is
4 loaded. Marc Wachter told you he had over a hundred million
5 dollars. He was by far the largest investor in DWAC. He'd
6 bought, by far, more founders round shares than anybody. This
7 is someone who Patrick Orlando wanted to be very happy. As
8 Marc Wachter explained, Patrick Orlando—can we show the
9 quote—said that Anton Postolnikov should be on our preferred
10 and early list always. Mr. Wachter told us, "Those are
11 Patrick's words, but I would agree with that."

12 Okay? And we know, because Mr. Wachter admitted it,
13 that before he was interviewed by the government in this case,
14 he went on his phone and he deleted a bunch of text
15 conversations, including a group chat with Mr. Orlando and
16 Mr. Postolnikov. Okay? And the information, the evidence in
17 this case—again, I have no burden of proof. I'm not trying to
18 prove anything beyond a reasonable doubt, but I'm trying to
19 show you what the evidence suggests and what should not be
20 brushed off. I think the government in summation wanted you to
21 just brush this off and not pay attention to it. But you have
22 to pay attention to it, because it's very real.

23 On October 11th, nine days before the merger is about
24 to be announced, Marc Wachter has inside information. He knows
25 that Patrick Orlando is about to announce news. He says that

O581GAR4

Summation - Mr. Bach

1 in an email to his friend Zoltan Present. This is on
2 October 11th. "Patrick will be announcing some DWAC news very
3 soon."

4 Now Mr. Wachter said, oh, that's not about a merger.
5 That's not about that. Look at the context. Okay. What else
6 could this news possibly be about? A SPAC is an empty shell
7 company. It has no operation. All it does is seek a merger.
8 It's not like DWAC is about to announce a new product line.
9 Doesn't have any product. That's not the news. It's not like
10 DWAC is about to announce a new advertising campaign. Doesn't
11 operate a business. This is news. Very soon. October 11th.
12 And the merger, okay?

13 And what's interesting about October 11th is that's
14 the day when Anton Postolnikov places his standing order.

15 Can we show Government Exhibit 965.

16 Mr. Shahabian showed you this on his closing. He
17 said, you know, you don't have to think about Anton Postolnikov
18 because all of his activity stems from a standing order that he
19 placed on October 12th. That was the day that he said he
20 wanted to buy 500,000 worth of warrants. Well, fine. It's a
21 standing order. But it's placed the day after Marc Wachter,
22 who's pursuing Anton Postolnikov like his new best friend, is
23 telling people, like Zoltan Present, that Patrick is about to
24 announce some big news. Do you think if there was money to be
25 made, Marc Wachter told only Zoltan Present that there was

O581GAR4

Summation - Mr. Bach

1 going to be big news? You think he kept his mouth shut when he
2 was talking to Anton Postolnikov?

3 Could we show chart 930, the Melley chart.

4 And you can see on October 11th is when Anton switches
5 to a warrant strategy. You see how it goes from U to W?

6 How else do you know that Marc Wachter had inside
7 information and knew the merger was coming because he lied
8 through his teeth about that on the witness stand? I'm going
9 to demonstrate that now. You might recall that I showed him a
10 series of texts from October 20th, the day the public
11 announcement of the merger was made. Here's what he texted to
12 one of his close, good friends, Patrick Orlando. This is
13 before any news is public. The news does not become public
14 until around 8 p.m. or after. You see that bottom text? He
15 says, "Hey, bud, what's the latest?" I pressed—I pressed
16 Mr. Wachter about that. And Mr. Wachter had a great
17 explanation. He said: That's because I haven't spoken to him
18 in two days, which is really not normal. This is just me—this
19 is a typical what's up. I haven't spoken to him in two days,
20 and we're so close, we're such buddies, that not to have spoken
21 to him in two days is just not normal for us, so I'm texting
22 him, "Hey, bud, what's up?" Well, guess what? The phone
23 records make very clear that Marc Wachter and Patrick Orlando
24 had not gone two days without talking to each other. They
25 spoke to each other that very morning, for 16 minutes and 29

O581GAR4

Summation - Mr. Bach

1 seconds, at 8:48. And do you think that phone call was
2 pleasantries at 8:48 in the morning, before anyone had had
3 coffee, or do you think this is Marc Wachter saying: Where we
4 at? What's up? Is it going forward? What's happening? Is
5 the merger gonna happen? Where are we? I don't have proof,
6 but there's compelling evidence.

7 And there's very compelling evidence that Marc Wachter
8 and Patrick Orlando and Anton Postolnikov and Gerald Shvartsman
9 and Michael Shvartsman saw each other often and regularly
10 throughout this key period and at key times that line up with
11 Mr. Melley's charts about trading. And I want to go over them
12 with you.

13 Can we pull up our chart.

14 This—I apologize—is an extraordinarily confusing,
15 overwhelming chart, but we were trying to fit in all of the
16 contacts between these people leading up to late October. And
17 you'll see this is all from testimony in the case, mainly from
18 Marc Wachter and some exhibits. But on September 15th, Anton
19 and Marc Wachter meet at Postolnikov's residence on Fisher
20 Island. 24th, they're meeting again. On the 11th, Marc
21 Wachter and Patrick are talking. That's the day—that's
22 earlier in the day. They have a seven-minute call. Then it's
23 later that day that Marc Wachter emails Zoltan Present that
24 Patrick will be announcing some DWAC news very soon.

25 October 15th, Gerald Shvartsman and Anton Postolnikov

O581GAR4

Summation - Mr. Bach

1 have a one-minute call. October 15th, Patrick Orlando and
2 Anton have a four-minute call.

3 Multiple calls on the 16th. Okay?

4 And then on October 16th, there's a party, at a
5 restaurant, attended by Marc Wachter, Anton Postolnikov, Gerald
6 Shvartsman, and Michael Shvartsman. Okay?

7 Now I just want you to understand these dates in
8 context. October 15th, when Patrick Orlando and Anton
9 Postolnikov have a four-minute call, that's a Friday. And
10 October 16th, when they go to the party, that's a Saturday.
11 The first day anyone can trade is October 18th. That's the
12 Monday. That's when that funky Gerald Shvartsman trade takes
13 place on October 18. That's when Gerald Shvartsman contacts
14 Adrian Lopez and Netanel Suissa and says, guys, there's going
15 to be a merger. You should think about investing in DWAC,
16 okay? And how do we know they're all there? Well, first of
17 all, Marc Wachter testified to some of the guests as best he
18 can recall and he—but we'll show you texts. This party took
19 place.

20 Can we show Defense Exhibit 93.

21 Is that Defense Exhibit 93?

22 Okay. So this is a text communication. I don't know
23 if you've seen it before, but it's between Michael and Gerald.
24 It doesn't say Gerald, but there's a stipulation as to the
25 phone numbers in this case. And this is October 16th, the day

O581GAR4

Summation - Mr. Bach

1 of the sushi dinner, and Michael is saying, "Gerald, dinner
2 tonight, Bulga (ph) birthday" —that's Anton's wife—and Gerald
3 is saying, "I know about the dinner."

4 And could we show Defense Exhibit 83A.

5 This is Gerald writing to Anton the following day,
6 sending a thank-you note. "Great party. Thanks for the
7 invite." "Thanks for coming, Gerald."

8 Let's take a look at the Gerald Shvartsman chart.
9 When the markets open on October 18, he buys.

10 Let's take a look at the Adrian Lopez chart. Adrian
11 Lopez Torres. He buys after the tip on the 20th.

12 Let's take a look at the Netanel Suissa. Starts
13 buying on the 19th.

14 Patrick Orlando was the captain of a very leaky ship.
15 I submit to you that as the biggest deal of his life
16 approached, toward the end of October, he was so excited, he
17 couldn't keep it from his best friend. Again, you met Marc
18 Wachter. Do you think he's the type of person who would keep
19 his mouth shut if there was money to be made? Eric Swider told
20 you that he met Marc Wachter only once and thought he was
21 toxic.

22 Could we pull that up.

23 The question is asked of Mr. Swider:

24 "Are you familiar with an individual by the name of
25 Marc Wachter?"

O581GAR4

Summation - Mr. Bach

1 "I am."

2 "How are you familiar with him, sir?"

3 "I met Marc Wachter in Miami probably 18 months ago
4 through Patrick Orlando. Patrick Orlando had showed me a
5 business that Marc Wachter needed help with."

6 And this is what Mr. Swider says: "Once I found out
7 who Marc Wachter was, I declined to do the business."

8 Marc Wachter is the guy who deletes texts and defrauds
9 insurance companies, and you heard it.

10 Mr. Shahabian just said, Marc Wachter is not the
11 tipper because he wasn't on the DWAC board of directors. That
12 was his argument. Well, Marc Wachter didn't have to be on the
13 board of directors because he had unlimited access to Patrick
14 Orlando—much more access than Mr. Garelick ever had, who
15 didn't speak to Patrick Orlando once outside a board meeting
16 between September 2nd and all the way through the time when the
17 news was publicly announced. And Mr. Shahabian just told you,
18 oh, you know Marc Wachter wasn't the tipper because he gave up
19 his shares; remember, he conveyed them to his friend Zoltan
20 Present, and he would never have done that if he had inside
21 information and had known that a merger was around the corner.
22 Well, I think it was pretty clear at trial that that was utter
23 nonsense because Mr. Wachter never had any shares. They were
24 never issued to him. That was all in his head, that he had no
25 shares to give up. But look at Marc Wachter's own testimony:

O581GAR4

Summation - Mr. Bach

1 "Q. If someone went to your house in 2021, knocked on
2 your door, and said, show me something from DWAC that says you
3 own DWAC founders shares, you would have nothing to show them,
4 correct?"

5 "A. Correct."

6 "Now you testified on direct that you gave up your
7 founders shares before the merger announcement, correct?"

8 "A. Correct."

9 "Sir, that's all make-believe, isn't it?"

10 "A. Yes."

11 They're asking you to take the word of Marc Wachter,
12 while they're calling Bruce Garelick a liar. Proof beyond a
13 reasonable doubt is doubt on which you don't hesitate. I
14 submit to you, you would hesitate in an important decision in
15 your life if you were relying on Mark Wachter's word. I submit
16 to you if he wanted to sell you insurance, you would hesitate.

17 Now let's take a look—we just talked about
18 October 18th. By the way, none of this is involving any
19 tipping by Bruce Garelick. Remember, his boss was in and out,
20 in one shot, on October 1st, because that's when warrant
21 trading opened, and he was done, okay? None of this is tipping
22 by Bruce Garelick.

23 If you look at October—let's look at October 20th.

24 I'm sorry. Let's look back at these Melley charts.

25 And this is Mr. Hannelius. And you can see that

O581GAR4

Summation - Mr. Bach

1 Mr. Hannelius—we just talked—we talked earlier about how he
2 followed in the footsteps of Michael Shvartsman on October 6th
3 and 7th by buying warrants as soon as the liquidity opened up
4 after Mr. Shvartsman's trades. But now you get one again kind
5 of out of the blue on October 20th. Again, I'm submitting to
6 you, when you see these out of the blue and they're not in any
7 logical or coherent pattern, they're not part of a preconceived
8 plan, yes, you can be suspicious. And yes, I have no burden of
9 proof. I don't know what happened. I'm just telling you,
10 there is compelling evidence.

11 So you see this for Mr. Hannelius.

12 And can we show on October 20th. That's just while
13 the market is open, the last day before the merger is
14 announced.

15 Can we look at Aric Gastwirth's chart.

16 This is Aric Gastwirth. You can see also a lot of
17 buying activity on October 20th, okay? And what do we know?
18 We know that Aric Gastwirth is a good friend of Michael
19 Shvartsman, that they—that Eric Hannelius is a close business
20 partner of Michael Shvartsman, that Michael Shvartsman was at
21 that dinner party on October 16th with Marc Wachter and Gerald
22 and Anton, and now, but, you know, Mr. Hannelius and
23 Mr. Gastwirth don't live in Florida, they live in different
24 states, but now they see him in Las Vegas. I don't know, you
25 know, what—I wasn't there. I don't have—I didn't conduct a

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Summation - Mr. Bach

1 grand jury investigation. But these are two close friends of
2 Michael Shvartsman. If anyone told them something, it wasn't
3 Bruce Garelick. He told you he doesn't know Aric Gastwirth.
4 Yes, yes, this is killer evidence. Bruce Garelick and Eric
5 Hannelius were dune buggy partners. But that was two days
6 later, after the news was publicly announced. That was not at
7 the time this occurred. There is no evidence, none, zero, that
8 Bruce Garelick tipped either Aric Gastwirth or Eric Hannelius.
9 That is pure speculation. Ladies and gentlemen, everyone in
10 this courtroom wants you to use your common sense and draw
11 reasonable and rational inferences, but when that common sense
12 crosses a line to speculation, you know, this might have
13 happened, that's when your antennae need to go up in the jury
14 room and you need to say, proof beyond a reasonable doubt is
15 not about speculation; it's about evidence and rational
16 inferences drawn from solid evidence. It's not, I guess this
17 could have been Bruce Garelick. They presented no proof of
18 that whatsoever.

19 Bruce Garelick gave you credible testimony,
20 corroborated by other evidence, explaining his state of mind
21 that he did buy stock, but he did it at a time when he thought
22 it was okay and he stopped, and that's corroborated by
23 contemporaneous documents. He explained to you what he did.
24 He told you he didn't tip anybody. And you've heard his
25 testimony. And now I've shown you that there's compelling

1 evidence that explains exactly what happened here without
2 having to think that someone with his career and his—what he's
3 worked hard to achieve, that everything he's done, that all of
4 this was because of him, and some criminal scheme that he was
5 behind?

6 Before I sit down, I want to address some of the legal
7 concepts that Judge Liman will talk to you about, and he will
8 tell you what the law is. He will—he is the master of the
9 law. You will listen to him, not me. But like Mr. Shahabian,
10 both of us have a crystal ball into what we think he will tell
11 you.

12 All of the charges in this case, you will learn,
13 require you to consider Bruce Garelick's state of mind. The
14 issue in this case is, did he at any point in time have the
15 mind of a criminal? Did he do something that he knew at the
16 time was wrong? Right? That's what makes someone a criminal,
17 when they cross a line and transgress. They know that that
18 line divides right from wrong and they cross that line
19 knowingly and intentionally, knowing that they're disobeying
20 the law. That is the essence of any crime. And the judge is
21 going to instruct you on some terms and concepts that bear that
22 out.

23 The first term or concept that I want to share with
24 you is the word "knowingly." That means that the government
25 must prove beyond a reasonable doubt that Bruce Garelick knew

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Summation - Mr. Bach

1 that he was actually in possession of material nonpublic
2 information at the time that he traded or encouraged others,
3 that he knew—that his state of mind was such that, I know that
4 this is material nonpublic information. Okay. He told you, I
5 achieved that state of mind on or about September 23rd and I
6 stopped trading, and I never tipped anybody and I never did
7 anything wrong. I never encouraged anyone to break the law.
8 That's knowingly.

9 The second thing the judge is going to talk to you
10 about is a concept called intent to defraud. That means if you
11 are considering Bruce Garelick, in order to convict, you must
12 find that he knew he was involved in a fraud and acted
13 intentionally to make it succeed, that that was his state of
14 mind as he was doing this, as he was telling Michael
15 Shvartsman, by the way, warrants, it's public now, warrants are
16 freely trading in the market, you know, you can trade warrants
17 now, call Ben Reed, you've got to find that he was doing that
18 with an intent to defraud, and he was involved—he believed he
19 was involved in a fraud and trying to make it succeed. That's
20 what you have to find. That's a heavy, heavy thing to have to
21 find.

22 And the judge is going to tell you about the word
23 "willfully." "Willfully." And that's a word that's applied in
24 connection with four of the five counts in this case. And what
25 "willfully" means is that someone has to act purposely, with

1 the intent to disobey or disregard the law. Okay? You have to
2 have the mind of a criminal to be convicted of any of these
3 crimes, okay? It's just—it's not a question of, did someone
4 exercise bad judgment? It's not a question of, did someone do
5 something they shouldn't have done? Did someone make a
6 mistake? Would someone else have seen material nonpublic
7 information two days earlier? Would someone have seen material
8 nonpublic information two days later? One can sit here in
9 retrospect and look back at this, these events, you know, in
10 the calm of retrospection and say, you know what, it might have
11 been prudent for him to stop trading on the 16th, or the 13th
12 or the 14th. That's not the issue. The issue is not whether
13 what he did was a bad judgment call or what he did was a
14 mistake or something like that. That's not the issue. The
15 only issue here is whether he did it with the intent and
16 purpose of disobeying the law, knowing that it was wrong and
17 yet went ahead and stepped forward and crossed that line.
18 You're not going to find anything that comes close to that
19 here.

20 I told you, when I first spoke to you at the outset of
21 this case, the essential question that what was in Bruce
22 Garelick's mind, did he have the mind of a criminal or did he
23 act in good faith. The judge will instruct you that good faith
24 is a complete defense, a complete defense, to all of the crimes
25 that are charged. I urge you to listen very carefully to that

1 part of this instruction.

2 The judge will tell you that as long as he held an
3 honest belief, even if it turned out to be wrong, as long as he
4 held an honest belief at the time and did not have an intent to
5 defraud anybody or to break the law, you must acquit him.

6 Now you heard from Bruce Garelick. You heard from him
7 when I talked to him and asked him questions. You heard from
8 him when the prosecutors talked to him and asked him questions.
9 Why would he act with a deliberate intent to commit fraud and
10 break the law, for \$49,000? Give up everything he had ever
11 gained? Why would he risk his whole career and suddenly start
12 acting that way, and thinking that way? There is no evidence
13 that he tipped anybody. There's no evidence that this was a
14 get-rich scheme for him to make tons of money for himself. He
15 had a good faith belief at the time that he was not in
16 possession of material nonpublic information, and he stopped
17 trading when he sensed that that was going to change.

18 Now he did fail to file forms. That's true. He
19 didn't file Form 3, Form 4, Form 5. That was a mistake. He
20 had never been on a board of directors before. He received no
21 training. And the stock trades he was making were in small
22 amounts, for little—relatively little dollar amounts that, you
23 know, it wasn't top of mind. When you go back to the jury
24 room, you can convict him, convict him of failing to fill out
25 that paperwork, because he did. But while you're convicting

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Summation - Mr. Bach

1 him of that, please acquit him of insider trading, because he
2 didn't do that. And the judge will instruct you that a
3 director's failure to file forms does not constitute insider
4 trading, nor does such a failure by itself, without more proof
5 of any element of the crimes charged here.

6 Now I—this is my last chance to speak to you. I
7 don't get to speak to you again. The prosecution has a
8 rebuttal. That's fair. That's part of the process, because
9 they have the burden of proof, beyond a reasonable doubt. And
10 that's a heavy burden, and it's taken very seriously by every
11 court that—that standard is applied in every court in this
12 country, to protect citizens who are accused of crimes. They
13 can only be convicted if the government meets that very heavy
14 standard. They get to go again, and I urge you, when you're
15 back in the jury room and talking to each other, say, what
16 would—if there's an argument that he makes that I don't get to
17 come up here and tell you, please think, what would the defense
18 say in response to this? Is there another way to look at this?
19 I think you've seen this. You've been a very attentive jury.
20 I ask you to do that.

21 Jury duty is an interesting thing. People get pulled
22 out of their ordinary lives, and it's one of the duties of
23 citizenship, and it's different. It's different from other
24 duties. You know, when we vote, you go into a ballot booth all
25 by yourself. You're not allowed to see what anyone else is

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1 doing, right? That is an individual, solitary experience with
2 voting. That's not like being on jury duty. Jury duty is—we
3 kind of form a community of people who haven't met each other
4 before, and we share our thoughts and our way of thinking, and
5 we talk to each other. And it's a collective effort. And each
6 of you should speak to your own views and listen carefully to
7 those of others. And we do this in courtrooms like this with
8 nice oak panels and beautiful rugs because this is a solemn—a
9 solemn calling. We're rarely called upon to judge an
10 individual and decide his fate. I know you will do that.

11 You've been a very attentive jury. You've been taking
12 notes. I speak for all of the lawyers here that we thank you
13 for your service and your time, and I urge you to return the
14 only reasonable verdict you can return here, which is not
15 guilty, on all five counts.

16 Thank you very much.

17 THE COURT: Thank you, Mr. Bach.

18 Members of the jury, it's now 10 of 1, so it's a
19 convenient time for us to take our lunch break. We'll
20 reconvene at 2:00. So I'm going to ask you to be in the jury
21 room five minutes of 2 so we can get started promptly at 2. As
22 Mr. Bach just informed us, at that point we will hear a
23 rebuttal summation, and then you'll receive my charge.

24 A reminder that the case has not yet been submitted to
25 you, so that means that until you hear the rebuttal summation

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1 and until my charge, number one, you shouldn't talk about the
2 case amongst yourselves or with anybody else, you shouldn't do
3 any research about the case at any time, and you should keep an
4 open mind until you step into that jury room and start
5 deliberating with one another.

6 So have a good lunch. We'll see you back here in a
7 little bit.

8 THE DEPUTY CLERK: All rise.

9 (Jury not present)

10 THE COURT: Be seated.

11 Just a few things. First of all, I want to
12 congratulate the lawyers on both sides for delivering
13 summations that, while in each instance they were a little bit
14 over their estimates, made sure that we got done by 1:00, which
15 helps in terms of the schedule.

16 When I deliver my charge, as previously discussed,
17 we'll have copies of the charge that I intend to have in the
18 hands of the jurors so that they'll be able to follow along.
19 And you all were provided copies of that last night by email.

20 We need an agreed-upon exhibit list to give to the
21 jurors. I don't think I received anything from the parties
22 last night. So maybe if there are lawyers or paralegals who
23 are not working on the rebuttal summation, that they can just
24 make sure that that's finalized, that would be helpful.

25 We intend to give a copy of the trial indictment to

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1 the jurors. I think there was no objection to the verdict
2 sheet, so we'll give them one copy of the verdict sheet.

3 And then just so you know, my practice, after I
4 deliver the charge and after they go back to deliberate, you're
5 all free to leave the courtroom, but you need to give my deputy
6 contact information, and make sure that you're always within
7 ten minutes of the courtroom so that if we get a note, you can
8 come back here and that we don't delay the jury. If, you know,
9 a lawyer is more than ten minutes late, I'm going to reserve
10 the right to get started. So just make sure that my deputy has
11 that information.

12 Anything from the government before lunch?

13 MR. SHAHABIAN: No, your Honor.

14 THE COURT: Mr. Bach?

15 MR. BACH: No, thank you, Judge.

16 THE COURT: Okay. See you back here.

17 THE DEPUTY CLERK: All rise.

18 (Luncheon recess)
19
20
21
22
23
24
25

O58Cgar5

AFTERNOON SESSION

2:01 p.m.

(Jury not present)

THE COURT: I understand the jury is here.

Mr. Nessim, are you ready for me to bring the jury in?

MR. NESSIM: Yes, your Honor.

THE COURT: Mr. Bach.

MR. BACH: Yes.

THE COURT: Let's bring the jury in.

MS. HANFT: Your Honor, can I put one thing on the
record first?

THE COURT: Yes. Mr. Fishman will hold off bringing
in the jury while you do it.

MS. HANFT: Our paralegal informed us that as he was
getting into the elevator, he encountered a juror. He did not
immediately realize it was a juror and said like a casual hey,
and then let the juror go ahead when he realized and said sorry
and walked away. I just wanted to put that on the record.

THE COURT: The defense request me to do anything with
respect to that?

MR. BACH: No.

THE COURT: All right. Let's bring in the jury.

(Jury present)

Welcome back, members of the jury. We'll now hear the
government's rebuttal summation.

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Summation - Mr. Nessim

1 Mr. Nessim.

2 MR. NESSIM: Thank you, your Honor.

3 Good afternoon, everyone. What you had heard before
4 the lunch break was an experienced and skilled defense attorney
5 working hard to do his best for his client. Mr. Bach is a very
6 good attorney, but he is not a magician. You heard him say
7 that there is no evidence establishing that Bruce Garelick
8 tipped Michael Shvartsman, Eric Hannelius, and others. You
9 heard him say there's no evidence that he was involved in this
10 criminal scheme, in these five counts that you're being asked
11 to consider in this trial. That's not true. He is not a
12 magician, the evidence exists, and he can't make it disappear.
13 He can't make the nondisclosure agreements that you saw
14 disappear. He can't make email after email and text message
15 after text message disappear, the one where he says, I
16 recommend you buy DWAC units; the ones where he says, this is
17 anticipated to be announced in 6 to 10 weeks; the one where he
18 says, I took one for the team; the one where he says, we made
19 \$20 million - he can't make those disappear.

20 He can't make the fact that Garelick was a director of
21 DWAC disappear. He can't make the fact that he owed fiduciary
22 duties to that company and to its shareholders, he can't make
23 that disappear. He can't make Garelick's own trades disappear,
24 that page full of trading that Garelick placed in DWAC
25 securities at the time that he had material nonpublic

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Summation - Mr. Nessim

1 information. He can't make Garelick admitting that he's on the
2 board just to babysit disappear. He can't make all of his
3 urgings to Michael Shvartsman to buy warrants, to buy DWAC
4 units, he can't make that disappear. He can't make any of that
5 evidence disappear. And because he can't make it disappear,
6 he's tried to explain it away to you. He has tried to explain
7 why each piece of evidence points to some other conclusion than
8 that their client is guilty, but he is not a magician.

9 I'm going to briefly address some of those specific
10 arguments that he made before lunch. I'm not going to address
11 every argument because I don't want to repeat Mr. Shahabian's
12 entire closing argument. I know that you'll apply your common
13 sense and your memory to all of the evidence that came in in
14 this case. You've been sitting here and paying attention
15 throughout this trial, and you heard and seen all the evidence.
16 Mr. Bach's arguments don't hold up against all that you've
17 seen.

18 And before I get there, I want to remind you again,
19 the defense has no burden in this case, the government does.
20 We embrace that burden. We have met that burden here. But
21 when the defense does put forward arguments, when the defendant
22 testifies, you can and should scrutinize that evidence, you
23 should scrutinize those arguments carefully, especially
24 arguments and evidence as unsound as the ones you heard from
25 the defense during this trial.

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Summation - Mr. Nessim

1 I want to turn first to an issue about the alternative
2 tippers. Mr. Bach spent some time on this in his closing. I
3 want to deal with it first because it's really not the core of
4 this case, it's not the core of what you're being asked to
5 consider. It's being presented to you to distract you from
6 what matters.

7 There is substantial evidence that Mr. Garelick tipped
8 Michael Shvartsman, Eric Hannelius, others. Gerald Shvartsman
9 received those tips, Aric Gastwirth received those tips, Adrian
10 Lopez Torres received those tips, Anton Postolnikov traded on
11 insider information. There's substantial evidence of all of
12 that. Most of that is irrelevant -- it's relevant -- excuse
13 me -- you should consider it for the charged counts, but you're
14 not required to in order to return a verdict of guilty on each
15 of the five counts that you're being asked to consider.

16 The questions of alternative tippers, those apply to
17 trades in October, late October, well after Mr. Garelick placed
18 his own purchases of DWAC securities on the basis of inside
19 information, well after Michael Shvartsman placed his trades,
20 well after this conspiracy was formed, well after this scheme
21 was reached, well after the defendant tipped Eric Hannelius.
22 Even if you decide for some reason that some of those later
23 tipping conduct may not have been committed by the defendant,
24 we submit to you that's the wrong conclusion, but it does not
25 require a verdict of not guilty on any of the five counts.

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Summation - Mr. Nessim

1 So, let's talk about some of that alternative tipper
2 testimony. I want to deal with it briefly because it really is
3 a distraction from the core issues here.

4 So, first of all, their justifications for certain
5 trades shift as the timeline continues, and this is an
6 indication to you that this is just a distraction, it's a way
7 to confuse you from issues that matter.

8 So, for example, Gerald Shvartsman's earlier trades,
9 the one he placed October 7th, October 8th, that was his kind
10 brother, Michael Shvartsman, clueing him in on this great
11 investment strategy that he's had for a long time, that's
12 totally fine. But his October 18th trade in DWAC, that's based
13 on the terrible tip he received from Anton Postolnikov, from
14 Marc Wachter, from Patrick Orlando, this whole alternative
15 tipping chain.

16 There are inconsistent justifications for the same
17 person's investment in DWAC, and they're inconsistent because
18 they don't make sense. Gerald Shvartsman purchased his DWAC
19 securities because he knew that DWAC was working to merge with
20 Trump, and he purchased more as it got closer to the merger
21 because he knew that that merger was about to be announced and
22 the shares were going to go way up. That's why, not because he
23 received some illicit tip at the end of that period, it's
24 because that was the plan from the beginning.

25 They talked about Marc Wachter. Mr. Wachter testified

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Summation - Mr. Nessim

1 here, you all saw him, you were able to assess his demeanor,
2 his answers. No one is asking you to like Mr. Wachter, no one
3 is asking you to share a meal with him. The question is, was
4 he the tipper? The answer's obviously not. What came across
5 very clearly from Mr. Wachter is that he's someone who likes
6 money, he wants money, he doesn't have as much as he wishes he
7 has. If he had any idea that the merger was about to be
8 announced was just days away from being announced and he had
9 the potential to have millions of dollars worth of founders
10 shares, as much as that was a contingent thing that depended on
11 other things happening for him to access the founders shares,
12 would he have ever signed away his rights to that for \$100,000?
13 He gave up millions for \$100,000. That's one indication to you
14 that he had no idea that this merger was about to be announced.

15 The alternative approach theory falls apart. They say
16 he talked to Orlando all the time. That's true. He testified
17 they're close friends, they talked all the time, but he voted
18 with his feet. He took action, he sold his interests because
19 he didn't understand what was about to happen, he didn't
20 understand the potential of what it was. He could not have
21 been part of this tipping chain.

22 And Anton Postolnikov, they point to him like this
23 ghost who's lurking on the fringes of this case. He also had
24 access to inside information. That was thanks to Mr. Garelick
25 and his tips to Michael Shvartsman, and that is how he got it.

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Summation - Mr. Nessim

1 Look at Mr. Garelick's text with Mr. Postolnikov and look at
2 Mr. Wachter's communications with Mr. Postolnikov. Wachter,
3 Postolnikov talked about life insurance. Wachter is lusting
4 after this guy's money, he wants to sell life insurance, sure,
5 but the defendant's texts with Mr. Postolnikov, they're about
6 DWAC. It's about what is this position, I'm on the board to
7 babysit, this is a great deal, if it's not who you like/expect,
8 then we'll redeem. It's all about DWAC.

9 So what is the more reasonable conclusion? Some
10 alternative tipper chain that's hard to understand or that it
11 came from the defendant? It's that it came from the defendant.
12 But again, even if you disregard the alternative tipper chain
13 or those later trades, they cast very limited light on the core
14 of the five charged counts, so it's really a distraction.

15 So let's turn to some of the other arguments that
16 defense counsel raised. They asserted that Mr. Garelick didn't
17 believe the information he had was material. I'm going to get
18 into this in a little bit about how Mr. Garelick lied on the
19 stand, but let's just talk about from the earliest meetings,
20 his earliest meetings with Mr. Orlando when he gets the
21 information about this deal. The idea that he didn't think
22 that Mr. Orlando's back was in negotiations with Trump was
23 material is preposterous, it's ridiculous.

24 I just want to pull up one example of this.
25 Mr. Bianco, could you please publish Government Exhibit 743 and

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Summation - Mr. Nessim

1 turn to page 2. If you could zoom into the last text there.

2 Thank you.

3 So this is on June 30th of 2021. This is just after
4 the two meetings that Mr. Garelick had with Patrick Orlando
5 that were subject to nondisclosure agreement. Here he is
6 trying to pitch the founders shares idea to another potential
7 investor. He's saying Michael and I wanted to share with you
8 an interesting investment opportunity. And then he says, just,
9 this is a sweetheart deal with protected downside and some
10 crazy speculative upside. It involves founders shares of a
11 soon to IPO SPAC that has an exclusive with the soon to launch
12 Trump Media Group, TMG.

13 This message shows you that Mr. Garelick knew this was
14 material on June 30th. How do you know that he knew it was
15 material? Because it's the information that he is giving to
16 potential investors to tell them they should make this
17 investment. It's the important issue that affects their
18 investment decision, so he's telling them, this is what it is,
19 it's exclusive with Trump, invest. He knew it was material
20 from the outset. So the idea that he didn't know, that is
21 ridiculous.

22 Mr. Bianco, you can take that down, please.

23 It's so obvious how meaningful this information is to
24 the defendant. Trump SPAC, Trump SPAC, Trump SPAC, referencing
25 it again and again. You heard him at the board, his thoughts

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Summation - Mr. Nessim

1 of how explosive this possible deal could be. He was thinking
2 that way throughout. It was material to him throughout. He
3 knew that. Mr. Bach was saying something like, you know, it
4 was uncertain if this merger would happen or it was
5 uncertain if the business would actually combine. That may be
6 true, but uncertainty doesn't make something immaterial, the
7 chance of the hit is what makes it immaterial. The average
8 investor would want to know that they have the chance to strike
9 gold. It is part of their calculus in determining how to make
10 their investments. And there are also all those messages about
11 how they'll exercise their redemption rights if it's not plan
12 A, if it's not who we examine. It's the purpose of a deal.
13 It's material from the beginning.

14 Now I want to turn to another way that you know
15 Mr. Garelick committed these crimes and that he did it
16 knowingly, willfully, and with intent to defraud, and that's
17 his testimony here before you.

18 He lied. He got up on that witness stand, he swore an
19 oath to tell the truth, and he lied through his teeth. He lied
20 because he had to and he lied because the truth is devastating.
21 He lied about when he learned about the DWAC opportunity. He
22 said that it was surprise invitation, his first meeting with
23 Patrick Orlando.

24 He claimed it was a surprise meeting, but that is not
25 true. On June 14th, the defendant, Michael Shvartsman and

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Summation - Mr. Nessim

1 Gerald Shvartsman received the NDAs relating to DWAC and
2 Benessere in advance of that June 18th meeting. That's
3 Government Exhibits 217 for Michael Shvartsman and 218 for the
4 defendant. The same day, June 14th - and this is in Government
5 Exhibit 721 - they start talking about SPACs, how to make money
6 off of SPACs. The defendant testified, this is just generally
7 about SPACs. Four days before this meeting, the same day I got
8 the NDA, the same day my boss got and actually signed the NDA,
9 this is just general conversation. And why did he have to lie
10 about that? Because he wanted to seem like he wasn't prepared
11 for this conversation, like he didn't understand that he was
12 receiving confidential information, but that's not true.

13 And he lied about when he believed he came into
14 possession of material nonpublic information. On his
15 testimony, he entirely dodged the board meeting that happened
16 on September 21st. He entirely avoided mention of the
17 September 22nd letter of intent that he voted on on September
18 22nd. He had to lie and he had to claim that the first time he
19 had some idea that he might have material nonpublic information
20 was after his last trade on September 23rd. It's obvious why
21 he lied that way, because he had to find a way to justify his
22 own purchases in DWAC. He said the drumbeat began to start on
23 September 23rd. Members of the jury, the drumbeat began to
24 start on September 23rd? The drumbeat started in June. By
25 September 23rd, it's the Macy's Thanksgiving Day Parade,

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Summation - Mr. Nessim

1 marching bands are coming down Central Park West. I mean, that
2 was the first idea he had nonpublic information? He had voted
3 on a mutually exclusive letter of intent, the same information
4 that he thought was material in that June text message to
5 Mr. Cooperman. It's laughable.

6 He also told you that his text message to Michael
7 Shvartsman, when he said, I recommend you buy DWAC units, that
8 in that text message he didn't mean "recommend," what he
9 actually meant was "remind," as if he's some kind of Outlook
10 calendar pushing Michael Shvartsman's reminders to him. It's
11 ridiculous. Here's Michael Shvartsman's chief investment
12 officer. The plan was for him to be Michael Shvartsman's seat
13 on the board, his eyes and his ears and his mouth. He is
14 recommending he buys DWAC units because by this point events
15 are happening quickly. He knew that. It's time to start
16 buying because this merger announcement is coming and we need
17 to hit it rich.

18 And you saw his mannerisms here on the witness stand.
19 He testified very differently on direct examination than he did
20 on cross examination. His lies were not ready to be tested on
21 cross examination. And what do all these lies tell you? That
22 he's guilty, that he knew what he was doing was wrong, that he
23 acted intentionally.

24 I mentioned that his role was to report back. This is
25 so obvious. There are so many messages where he refers to his

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Summation - Mr. Nessim

1 role on the board. They're in messages beforehand to
2 Mr. Postolnikov about a front-row babysitting job, he is there
3 to watch out for the investment, he is there to make sure they
4 can take advantage of this opportunity, to trade on the
5 material nonpublic information.

6 And then after the fact, big day today, we made
7 \$20 million on it. And then he tells the colleague at Rocket
8 One that he took one for the team. All good, man. No
9 complaints. This was the plan from the beginning. This plan
10 shows you, it's another important piece of the evidence as to
11 how you know he tipped Michael Shvartsman because this was the
12 point of him being on the board, so that he could do this.

13 And you see some of these messages in terms of the
14 nature of his relationship in reporting communications back to
15 Michael Shvartsman. He has that phone call with Patrick
16 Orlando on September 2nd. That's in Government Exhibit 950 and
17 950a. Those are some of the phone records from that period of
18 time. And he talks to Patrick Orlando. It's the first day
19 that he is a board member of Patrick Orlando's SPAC company.
20 He has fiduciary duties to that company, and Orlando knows he's
21 a board member. They talk and he texts Michael that day. "I
22 spoke to Patrick Orlando, we can catch up later." He's feeding
23 information.

24 And then it's interesting, the reminder text. There's
25 that message about, "I recommend you buy DWAC units," but he

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Summation - Mr. Nessim

1 sends it on September 20th, which is the day before the first
2 board meeting. This is a tip, this is his suggestion to buy on
3 the basis of material nonpublic information that they know is
4 the Trump merger announcement. He sends that message, "I
5 recommend you buy DWAC units." And I think Mr. Bach pointed
6 out that point about DWAC units.

7 Mr. Bianco, can you please turn to Government Exhibit
8 511 and turn to page 3. Zoom into the top message, please.

9 So the next day on September 21st, Patrick Orlando
10 tells the board that they're now talking about separating the
11 units, disaggregating the units. So up until this point, as
12 you learned during this trial, investors could only buy units
13 in DWAC. Once they're separated, you could buy warrants and
14 shares separately.

15 Mr. Bianco, you can take that down.

16 So what happened after his "I recommend you buy DWAC
17 units" message, he told Michael Shvartsman to hold off because
18 the warrants were going to be available to trade soon. And so,
19 Michael Shvartsman didn't buy DWAC units, he didn't buy any
20 securities in DWAC until the warrants were available because
21 the warrants were cheaper, because the warrants had more
22 upside.

23 MR. BACH: Objection.

24 THE COURT: Let me see the parties at sidebar.

25 (At the sidebar)

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Summation - Mr. Nessim

1 What's the basis for the objection?

2 MR. BACH: There is no evidentiary basis for a
3 statement that was made. Mr. Nessim just said that
4 Mr. Garelick instructed Mr. Shvartsman to hold off from buying
5 units. There's no evidence of that in any way, shape, or form.

6 THE COURT: I'm going to give the jury an instruction
7 that just says, members of the jury, your recollection of the
8 evidence governs. I think that that's --

9 MR. NESSIM: If I could just be heard. There are
10 plenty of documents in evidence about phone calls between
11 Michael Shvartsman and Bruce Garelick after that text message
12 and it's argument based on that evidence. I can make an
13 additional statement to clarify this, that it's the phone
14 records we're pointing to as the source.

15 THE COURT: Mr. Bach.

16 MR. BACH: I just think they should limit their
17 arguments to the evidence and not posit facts that are not in
18 evidence. I think that's a basic fundamental requirement of
19 closing argument, particularly for prosecutors, and they should
20 stick to it.

21 MR. NESSIM: Your Honor, this is permissible argument
22 on the basis of the evidence. We don't have recordings of
23 these calls, so we can't say exactly on which call it was said,
24 but it's permissible to argue that this information was relayed
25 based on the circumstances in evidence, which is that he

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Summation - Mr. Nessim

1 recommended he buy DWAC units, he didn't buy those units, they
2 spoke after he received this message, he changed his advice.

3 THE COURT: I think you can say we don't know what he
4 said in that conversation, but the fact that he didn't buy DWAC
5 units doesn't preclude the notion that he gave them advice to
6 buy the warrants. I think that is permissible argument.

7 MR. NESSIM: If I can --

8 THE COURT: You can clean it up.

9 MR. BACH: Thank you.

10 (In open court)

11 MR. NESSIM: Members of the jury, Mr. Garelick learned
12 that the warrants were going to be split off, and there are
13 plenty of records of phone calls between Michael Shvartsman and
14 Bruce Garelick after that information was relayed to
15 Mr. Garelick. Mr. Shvartsman did not buy DWAC units. I would
16 argue to you that you can conclude from that that Mr. Garelick
17 told him to hold off until the warrants were publicly traded.
18 And then his September 30th message of saying units are now
19 publicly available, I would submit to you that that is just a
20 continuation of that advice, that now the warrants are
21 available, it's time to buy, and that's what Michael Shvartsman
22 did.

23 Mr. Bach also argued that that no one hid open market
24 trades in this case, as if Ben Reed blessed this insider
25 trading. Ben Reed did not know the full story. If

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Summation - Mr. Nessim

1 Mr. Garelick was so prudent, if he truly believed that he had
2 no access to material nonpublic information, if you could
3 credit his testimony, which you cannot, wouldn't he have gone
4 out of his way to make sure he was doing things properly?
5 There's nothing here of any sort of disclosure to Ben Reed. I
6 think Mr. Bach argued he assumed Ben Reed knew. There's no
7 evidence of that and there is no indication that Mr. Garelick
8 took the prudent steps to ensure that he was acting
9 consistently with his obligations as a director and
10 consistently with the law because he didn't care because the
11 crime was the point.

12 There also has been some argument that these purchases
13 are part of an investment strategy, some kind of strategy that
14 Michael Shvartsman and Bruce Garelick came up with months
15 earlier, months before they learned the material nonpublic
16 information.

17 This is a ridiculous argument. The evidence is clear
18 that Garelick, Rocket One, they invested in DWAC because the
19 target was Trump. It wasn't because of any sort of
20 Black-Scholes calculation, it wasn't because of any sort of
21 sense on general warrant upside, it was because they had inside
22 information.

23 And what was that material information, by the way?
24 It's not about, oh, is this report on the Trump Media Group
25 consistent with what's reported in the Axios article? The

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Summation - Mr. Nessim

1 inside information is this SPAC, DWAC, is talking to Trump
2 Media. The inside information is this SPAC, DWAC, has a board
3 meeting. The inside information is this SPAC, DWAC has a
4 letter of intent. The nature of Trump Media is not the point.
5 The point is what's material nonpublic information here is what
6 DWAC's doing, and that's what the defendant knew and that's
7 what Michael Shvartsman knew thanks to his help, and that's
8 what they traded off.

9 This is clear through so many messages. It's not
10 about some general calculation, it's not some analyst workup.
11 It's, we have downside protection. It's, we're doing this
12 because we think the merger is with who we will expect, it's if
13 it's not plan A, we'll exercise our redemption rights. And he
14 knew the announcement was going to be soon because of his
15 material nonpublic information. You know, he told Michael
16 Shvartsman, we're playing this as more of a short-term trader.
17 He told Eric Hannelius that the announcement is going to be 6
18 to 10 weeks from now. That's all based on inside information.
19 All of his assumptions, all of his beliefs, all of his
20 conviction in this investment is based on what he knew as a
21 result of his privileged position in the board and as to one
22 who signed a nondisclosure agreement and received confidential
23 information from DWAC.

24 And Mr. Garelick admitted on the stand that he did not
25 invest in other SPACs, and neither did Rocket One. So if this

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Summation - Mr. Nessim

1 is some sort of, our thesis is that SPAC warrants are
2 undervalued and you can make a lot of money on it, you would
3 have expected them to make that investment on many other SPACs.
4 They don't need to be like Saba, like a hedge fund, but you
5 would expect them to at least replicate that on several other
6 examples, but they don't because it's not about the theory,
7 it's about the material nonpublic information.

8 There's also substantial evidence in the record that
9 Mr. Garelick tipped Eric Hannelius. And this is something
10 Mr. Bach attacked a bit because it's one of the substantive
11 counts that you're going to be asked to consider.

12 Mr. Bianco, can you please publish Government Exhibit
13 465, page 3. Actually, page 2 into page 3. If you could
14 highlight from the header down into the third bullet.

15 So this is that email on September 9th from
16 Mr. Garelick to Eric Hannelius. The second bullet here, it
17 reads that announcement expected 6 to 10 weeks from now is our
18 expected catalyst to then profitably sell the IPO shares. That
19 information about timing is material nonpublic information.

20 Mr. Bianco, if you could just scroll down from this
21 frame a little. A little more. Great.

22 At the end of this email, Mr. Garelick writes, hope
23 that context helps, look forward to seeing you in Miami next
24 week.

25 Mr. Bianco, you can take that down.

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Summation - Mr. Nessim

1 And again, this is after that September 2nd phone call
2 with Patrick Orlando that Mr. Garelick had as a board member
3 with fiduciary duties.

4 Mr. Bianco, can you please publish Government Exhibit
5 465 and turn to the top page. I'm sorry. The second page.
6 Zoom into "Important."

7 This is the October 3rd email from Eric Hannelius that
8 you heard a lot about in summations and also in the defendant's
9 testimony. Mr. Hannelius wrote, hi, Bruce, want to follow your
10 lead here. See my agreement attached. I just did 75K in
11 founders shares. I've been buying some DWACU since seeing you
12 in Miami via my brokerage account. Should I keep buying?
13 What's your thoughts? Again, want to follow your lead here.
14 Any updating on timing and next steps from Patrick Orlando?

15 So first of all, what does this email say? It says
16 Mr. Hannelius has been buying DWAC units since his
17 conversations with Mr. Garelick. It's based on the information
18 that he relayed that led him to purchase these DWAC units.

19 And then he asks, any updating on timing and next
20 steps from Patrick Orlando? Now, I submit to you why would
21 Mr. Hannelius ask that? Is it out of the blue? He is just
22 intuiting that Mr. Garelick may have updates on timing and next
23 steps from Patrick Orlando? No. The obvious conclusion is
24 that Garelick had already shared updates and timing from
25 Patrick Orlando to Hannelius. He's asking for more. They met

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Summation - Mr. Nessim

1 in Miami in September and he started buying, and he's saying
2 what's the new update because Garelick had already shared those
3 updates, he already shared the material nonpublic information.

4 Mr. Bianco, you can take that down please.

5 There's this argument that Mr. Garelick restricted
6 himself, that he took steps to limit himself. On his own
7 trades, he was greedy, but he was smart. He knew that if he
8 did much more, his chances of getting caught would increase
9 significantly. The point of the whole plan, the point of him
10 being on the board was so that his boss and his company could
11 get rich. He didn't restrict himself, he took one for the
12 team. He did not act prudently. He did not stop at the first
13 sense of some drumbeat of material nonpublic information. He
14 is a sophisticated professional. He spent years in the
15 financial industry. He received training after training on
16 what insider trading and material nonpublic information means.
17 Adage Capital, CFA, his own hedge fund. He testified, and you
18 can go back to his testimony on page 1241, he said, the
19 definition of material nonpublic information is fairly clear.
20 And he said that you should be conservative as you're
21 approaching material nonpublic information. That may be true
22 statements of his training and what he knows, but that is not a
23 representation of what he did. He testified that he knew what
24 it means to have fiduciary duty to the company and to the
25 shareholders. That's on page 1283 of his testimony. Again, he

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Summation - Mr. Nessim

1 knows these things, but he ignored them, he disregarded them,
2 he acted in direct violation of what he knew because the point
3 was to break the law, the point was to commit insider trading.
4 He knew better, but he still did it.

5 And he said on his testimony that he also has
6 fiduciary duties to Rocket One. He testified about his duties
7 to Rocket One. We've all talked about this, how his role on
8 the board was to serve as a babysitter to look out for Rocket
9 One's interests. But even with that role, he couldn't resist a
10 little bit of trading himself, couldn't resist trying to make a
11 little extra money in his retirement account. And it's not a
12 little extra money, it's almost \$50,000. He doubled his
13 investment in the round of a month. That is significant.

14 And the forms are also such important evidence of his
15 willfulness, his intent to defraud. He testified he knows
16 about insider sales, he knows that these are publicly reported,
17 he knows that people look to those forms to get transparency of
18 the market, of insiders. It's about making sure that the
19 public has access to this kind of sensitive information.
20 There's been no real explanation as to why he didn't file these
21 forms.

22 And I just want to be clear, because defense counsel
23 said you should go back to the jury room and convict him on
24 failing to file the Form 4s. No one is asking you to do that.
25 That's not one of the counts. The counts are insider trading.

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Summation - Mr. Nessim

1 But the Form 4s, the failure to file them, it shows you so
2 clearly how at the time that the defendant was committing these
3 crimes, he knew exactly what he was doing, he knew it was
4 wrong, he knew it was against the law, he knew he didn't want
5 to get caught, and filing the Form 4s would basically be
6 advertising his crime to the world.

7 Now, we've talked about his personal sales. I just
8 want to turn to one of them in particular, September 23rd.
9 This was the purchase that Mr. Garelick made after he had voted
10 on a mutually exclusive letter of intent with Trump Media.
11 This is devastating to their case and that's why he had to
12 construct this lie about the drumbeat during his testimony
13 because that trade, it's irrefutable, it's irrefutable
14 throughout, but this is the most obvious example of the
15 defendant's trading in material nonpublic information in
16 violation of his duties. There is no defense to it. This is
17 not a trick question. This is as clear as day. He was on the
18 board, he had material nonpublic information. He knew his
19 obligations, he ignored them, he traded. And that's really all
20 you need to know about what he did.

21 Members of the jury, the defendant was a director. He
22 had a fiduciary duty, a duty of trust and confidence, a duty he
23 owed to DWAC and a duty he owed to the shareholders, retail
24 investors, institutional investors, the shareholders that the
25 defendant betrayed, people who don't have access to the same

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1 information, the same power. He cheated. He used his inside
2 information for himself. He didn't care about his duties, he
3 didn't care about anyone other than himself and his boss and
4 the other people in the small group that he tipped. Mr. Bach
5 asked, why would he do this? The point is that he did it. He
6 committed these crimes. He is responsible for his actions. He
7 made these choices knowing full well what he was doing.

8 Now, I'm about to sit down, but before I do, I just
9 want to say that you heard a lot in the defense summation about
10 reasonable doubt. The defense wants you to believe that it's
11 an impossible standard. Now, Judge Liman will instruct you
12 about what that term means in a few minutes. The standard is
13 not beyond any doubt. As you listen to Judge Liman's
14 instructions, please keep this in mind: There is nothing
15 mystical or magical about the term "beyond a reasonable doubt."
16 It is the very same burden of proof that is applied in criminal
17 cases every single day in every single courtroom in this
18 country, and every day, juries reach verdicts. Every criminal
19 defendant is entitled to a trial, absolutely, but not every
20 case is a close case, and this one isn't close at all. The
21 defendant is guilty.

22 THE COURT: Thank you, counsel.

23 Members of the jury, you've heard argument from
24 counsel that information Mr. Garelick had at certain periods of
25 time was or was not material nonpublic information. It's not

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1 up to the lawyers to decide what is material nonpublic
2 information, that will be a decision that you will make, and
3 you'll make it on instructions that I'll give you in a moment.
4 I'll also give you the other instructions that govern this case
5 with respect to state of mind.

6 For now, we're going to take a 10-minute break. My
7 instructions will take probably about an hour and a half, so
8 it's a good time for you to stretch your legs. Don't talk
9 about the case, keep an open mind until it's time for you to
10 deliberate, and don't talk amongst yourselves about the case.

11 (Jury not present)

12 Be seated.

13 Mr. Bach, I think counsel pretty much cleaned up what
14 he said, but was there anything you wanted to raise with me?

15 MR. BACH: No. Thank you, Judge.

16 THE COURT: It's now 2:44, let's be back here at
17 5 minutes of 3:00.

18 MR. BACH: Thank you.

19 (Recess)

20 THE COURT: I'm prepared to bring in the jury.
21 Anything from the government before I do so?

22 MR. NESSIM: No, your Honor.

23 THE COURT: Anything from the defense?

24 MR. BACH: Nothing. Thank you, Judge.

25 THE COURT: When we bring in the jurors, we'll hand

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1 out the charge to them and I'll deliver the charge.

2 I want to thank the parties for the exhibit list.

3 (Continued on next page)

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Charge

1 (Jury present)

2 THE COURT: Be seated.

3 Mr. Fishman, would you please hand the members of the
4 jury a copy of my charge.

5 Members of the jury, we've handed you copies of my
6 written charge. You'll have that in the jury room with you.
7 It's now being provided to you for your assistance as I read
8 the charge, but focus on the words that I speak. Don't look
9 ahead. Focus on the words that I say, and you can read with me
10 on the charge. And I'm going to start on page 1.

11 I. Introductory Instructions.

12 You have now heard all of the evidence in the case as
13 well as the final arguments of the parties.

14 My duty at this point is to instruct you as to the
15 law. It is your duty to accept these instructions of law and
16 apply them to the facts as you determine them, just as it has
17 been my duty to preside over the trial and decide what
18 testimony and evidence is relevant under the law for your
19 consideration.

20 On these legal matters, you must take the law as I
21 give it to you. If an attorney has stated a legal principle
22 different from any that I state to you in my instructions, it
23 is my instructions that you must follow.

24 You should not single out any instruction as alone
25 stating the law, but you should consider my instructions as a

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Charge

1 whole when you retire to deliberate in the jury room. And you
2 should know that you're going to be able to take a copy of
3 these instructions into the jury room.

4 Your final role is to pass upon and decide the fact
5 issues that are in the case. You, the members of the jury, are
6 the sole and exclusive judges of the facts. You pass upon the
7 weight of the evidence; you determine the credibility of the
8 witnesses; you resolve such conflicts as there may be in the
9 testimony; and you draw whatever reasonable inferences you
10 decide to draw from the facts as you have determined them. I
11 will later discuss with you how to pass upon the
12 credibility--or believability--of the witnesses.

13 In determining the facts, you must rely upon your own
14 recollection of the evidence. The evidence before you consists
15 of the answers given by witnesses--the testimony they gave, as
16 you recall it--and the exhibits that were received in evidence.
17 The evidence does not include questions. Only the answers are
18 evidence. But you may not consider any answer that I directed
19 you to disregard.

20 You may also consider the stipulations of the parties
21 as evidence.

22 Since you are the sole and exclusive judges of the
23 facts, I do not mean to indicate any opinion as to the facts or
24 what your verdict should be. The rulings I have made during
25 the trial are not any indication of my views of what your

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Charge

1 decision should be as to whether or not the guilt of the
2 defendant has been proven beyond a reasonable doubt.

3 I also ask you to draw no inference from the fact that
4 upon occasion I asked questions of certain witnesses. These
5 questions were only intended for clarification or to expedite
6 matters and certainly were not intended to suggest any opinions
7 on my part as to the verdict you should render or whether any
8 of the witnesses may have been more credible than any other
9 witness. You are expressly to understand that the Court has no
10 opinion as to the verdict you should render in this case.

11 As to the facts, you are the exclusive judges. You
12 are to perform the duty of finding the facts without bias or
13 prejudice as to any party.

14 As I said, in determining the facts, you must rely
15 upon your own recollection of the evidence. What the lawyers
16 have said in their opening statements, in their closing
17 arguments, in their objections, or in their questions is not
18 evidence. If your recollection of the facts differs from the
19 statements made in opening or closing, you should rely on your
20 recollection. If a statement was made during an opening or
21 summation and you find that there is no evidence to support the
22 statement, you should disregard the statement.

23 A question put to a witness is not evidence. It is
24 only the answer that is evidence. Nor is anything I may have
25 said during the trial or may say during these instructions with

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Charge

1 respect to a fact to be taken in substitution for your own
2 independent recollection. What I say is not evidence.

3 Relatedly, do not conclude from any of my questions or
4 any of my rulings on objections or anything else I have done
5 during this trial that I have any view as to the credibility of
6 the witnesses or how you should decide the case.

7 In addition, remember that it is the duty of a party
8 to object when the other side offers testimony or other
9 evidence that the party believes is not properly admissible.
10 Therefore, you should draw no inference from the fact that
11 there was an objection to any evidence. An objection is not
12 evidence. Nor should you draw any inference from the fact that
13 I sustained or overruled an objection. Simply because I have
14 permitted certain evidence to be introduced does not mean that
15 I have decided on its importance or significance. That is for
16 you to decide.

17 The personalities and the conduct of counsel are not
18 in any way at issue. If, from their conduct at this trial, you
19 formed opinions of any kind about any of the lawyers in the
20 case, favorable or unfavorable, whether you approved or
21 disapproved of their behavior, those opinions should not enter
22 into your deliberations. The only issue is whether the
23 government has proven each of the elements of the charged
24 offenses beyond a reasonable doubt.

25 The fact that the prosecution is brought in the name

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Charge

1 of the United States of America entitles the government to no
2 greater consideration than that accorded to any other party to
3 a litigation. By the same token, it is entitled to no less
4 consideration. All parties, whether the government or
5 individuals, stand as equals at the bar of justice.

6 Now, I will instruct you on the presumption of
7 innocence and the government's burden of proof in this case.
8 The defendant has pleaded not guilty. By doing so, he denies
9 the charges in the indictment. Thus, the government has the
10 burden of proving the charges against the defendant beyond a
11 reasonable doubt. The defendant is presumed innocent. A
12 defendant does not have to prove his innocence. This
13 presumption of innocence was in the defendant's favor at the
14 start of the trial, continued in his favor throughout the
15 entire trial, is in his favor even as I instruct you now, and
16 continues in his favor during the course of your deliberations
17 in the jury room.

18 The government has the burden of proof in this case.
19 The presumption of innocence is removed as to the defendant if,
20 and only if, you, as members of the jury, are satisfied that
21 the government has sustained its burden of proving the guilt of
22 the defendant beyond a reasonable doubt.

23 The question that naturally arises is, "What is a
24 reasonable doubt?" A reasonable doubt is a doubt based on your
25 reason, your judgment, your experience, and your common sense.

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Charge

1 It is a doubt that a reasonable person has after carefully
2 weighing all the evidence. It is a doubt founded in reason and
3 arising out of the evidence in the case--or the lack of
4 evidence.

5 Proof beyond a reasonable doubt does not mean proof
6 beyond all possible doubt. It is practically impossible for a
7 person to be completely and absolutely convinced of any
8 disputed fact that, by its nature, cannot be proven with
9 mathematical certainty. The government's burden is to
10 establish guilt beyond a reasonable doubt, not all possible
11 doubt.

12 If, after a fair and impartial consideration of all
13 the evidence, you can candidly and honestly say that you do
14 have an abiding belief of the defendant's guilt, such a belief
15 as a prudent person would not hesitate to act upon in important
16 matters in the personal affairs of his or her own life, then
17 you have no reasonable doubt, and under such circumstances it
18 is your duty to convict. On the other hand, if, after a fair
19 and impartial consideration of all the evidence, you can
20 candidly and honestly say that you are not satisfied with the
21 guilt of the defendant, that you do not have an abiding belief
22 of the defendant's guilt--in other words, if you have such a
23 doubt as would reasonably cause a prudent person to hesitate in
24 acting in matters of importance in his or her own affairs--then
25 you have a reasonable doubt, and in that circumstance it is

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1 your duty to acquit.

2 The government is not required to prove the essential
3 elements of either offense by any particular number of
4 witnesses. The testimony of a single witness may be sufficient
5 to convince you beyond a reasonable doubt of the existence of
6 the essential elements of the offense you are considering if
7 you believe that the witness has truthfully and accurately
8 related what they have told you.

9 There are two types of evidence that you may properly
10 use in deciding whether the defendant is guilty or not guilty
11 of the crimes with which he is charged.

12 One type of evidence is called direct evidence.
13 Direct evidence of a fact in issue is presented when a witness
14 testifies to that fact based on what he or she personally saw,
15 heard, or otherwise observed through the five senses. The
16 second type of evidence is circumstantial evidence.
17 Circumstantial evidence is evidence that tends to prove a
18 disputed fact indirectly by proof of other facts.

19 There is a simple example of circumstantial evidence
20 that is often used in this courthouse. Assume that when you
21 came into the courthouse this morning, the sun was shining, and
22 it was a nice day outside. Also assume that the courtroom
23 shades were drawn, and you could not look outside. Assume
24 further that as you were sitting here, someone walked in with
25 an umbrella that was dripping wet, and then, a few moments

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1 later, somebody else walked in with a raincoat that was also
2 dripping wet.

3 Now because you could not look outside the courtroom
4 and you could not see whether it was raining, you would have no
5 direct evidence of that fact. But on the combination of facts
6 that I've asked you to assume, it would be reasonable and
7 logical for you to conclude that it was raining.

8 That is all there is to circumstantial evidence. You
9 infer on the basis of your reason, experience, and common sense
10 from one established fact the existence or the nonexistence of
11 some other fact.

12 The matter of drawing inferences from facts in
13 evidence is not a matter of guesswork or speculation. An
14 inference is a logical, factual conclusion that you might
15 reasonably draw from other facts that have been proven.

16 Many material facts, such as a person's state of mind,
17 are not easily proven by direct evidence. Usually, such facts
18 are established by circumstantial evidence and the reasonable
19 inferences you draw. Circumstantial evidence may be given as
20 much weight as direct evidence. The law makes no distinction
21 between direct and circumstantial evidence. The law simply
22 requires that before convicting a defendant, you must be
23 satisfied of the defendant's guilt beyond a reasonable doubt,
24 based on all of the evidence in the case.

25 During the trial you may have heard the parties use

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1 the term "inference," and in their arguments they asked you to
2 infer, on the basis of your reason, experience, and common
3 sense, from one or more established facts the existence of some
4 other fact.

5 An inference is not a suspicion or a guess. It is a
6 reasoned, logical decision to conclude that a disputed fact
7 exists on the basis of another fact that you know exists.

8 There are times when different inferences may be drawn
9 from facts, whether proven by direct or circumstantial
10 evidence. The government asks you to draw one set of
11 inferences, while the defense asks you to draw another. It is
12 for you, and you alone, to decide what inferences you will
13 draw.

14 The process of drawing inferences from facts in
15 evidence is not a matter of guesswork or speculation. An
16 inference is a deduction or conclusion that you, the jury, are
17 permitted, but not required, to draw from the facts that have
18 been established by either direct or circumstantial evidence.
19 In drawing inferences, you should exercise your common sense.

20 So, while you are considering the evidence presented
21 to you, you are permitted to draw, from the facts that you find
22 to be proven, such reasonable inferences as would be justified
23 in light of your experience.

24 Some of the recordings and text messages presented
25 were in English and some were only in Spanish. With respect to

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1 recordings that were in English, the transcripts were only
2 aids--the recordings themselves are the evidence. But with
3 respect to messages that were in Spanish, the English
4 translations provided in writing or through testimony are the
5 evidence. You may not rely on your own interpretation of the
6 Spanish, even if you understand Spanish. The English
7 translation is the evidence of what was written in Spanish.

8 Some of the exhibits admitted into evidence include
9 redactions of certain information. "Redacted" means that part
10 of the document was taken out. There is nothing unusual or
11 improper about such redactions. You are to concern yourself
12 only with the part of the item that has been admitted into
13 evidence. You should not consider any possible reason why the
14 other part of it has been deleted.

15 In this case you have heard evidence in the form of
16 stipulations of fact. A stipulation of fact is an agreement
17 between the parties that a certain fact or set of facts are
18 true, and you must regard such agreed facts as true. It is for
19 you to determine the effect or weight to give those agreed-upon
20 facts.

21 If certain testimony or evidence was received for a
22 limited purpose, you must follow the limiting instructions I
23 have given and use the evidence only for the purpose I
24 indicated.

25 You, as jurors, must decide this case based solely on

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1 the evidence presented here within the four walls of this
2 courtroom. As I told you at the beginning of this case, you
3 must not conduct any independent research about this case, the
4 matters in this case, and the parties involved in the case. In
5 other words, you should not consult dictionaries or reference
6 materials, search the internet, websites, blogs, social media
7 platforms, or use any other electronic tools to obtain
8 information about this case or to help you decide the case.
9 You must not visit any location mentioned in this case for the
10 purpose of investigating it. Please do not try to find out
11 information from any source outside the confines of this
12 courtroom.

13 You must not talk to anyone about this case or use
14 these tools to communicate electronically with anyone about the
15 case. This includes your family and friends. You may not
16 communicate with anyone about the case on your cellphone,
17 through email, instant messaging, text messaging, through any
18 blog or website, through any internet chat room, or by way of
19 any other social networking platforms, including Facebook,
20 Twitter (or "X") Instagram, Threads, LinkedIn, Snapchat, and
21 YouTube.

22 If you become aware that any other juror is violating
23 or has violated this instruction, you should immediately bring
24 it to my attention through my courtroom deputy, Mr. Fishman,
25 but please do not make it known to any other jurors.

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1 Your verdict must be based solely upon the evidence
2 developed at trial or the lack of evidence.

3 It would be improper for you to consider, in reaching
4 your decision as to whether the government sustained its burden
5 of proof, any personal feelings you may have about the
6 defendant's race, religion, national origin, sex, or age. As I
7 have explained to you, all persons are entitled to the
8 presumption of innocence, and the government has the burden of
9 proof.

10 It would be equally improper for you to allow any
11 feelings you might have about the nature of the crimes charged
12 to interfere with your decision-making process.

13 To repeat, your verdict must be based solely upon the
14 evidence or the lack of evidence in the case.

15 I also caution you that, under your oath as jurors,
16 you cannot allow to enter into your deliberations any
17 consideration of the punishment that may be imposed upon the
18 defendant if he is convicted. The duty of imposing a sentence
19 in the event of conviction rests exclusively with the Court,
20 and the issue of punishment may not affect your deliberations
21 as to whether the government has proven the defendant's guilt
22 beyond a reasonable doubt.

23 Under your oath as jurors, you are not to be swayed by
24 sympathy. You are to be guided solely by the evidence in this
25 case, and the crucial question that you must ask yourselves as

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1 you sift through the evidence is: Has the government proven
2 the guilt of the defendant beyond a reasonable doubt?

3 It is for you alone to decide whether the government
4 has proven that the defendant is guilty of the crimes charged
5 solely on the basis of the evidence and subject to the law as I
6 charge you. It must be clear to you that once you let fear or
7 prejudice, or bias or sympathy interfere with your thinking,
8 there is a risk that you will not arrive at a true and just
9 verdict.

10 If you have a reasonable doubt as to the defendant's
11 guilt, you should not hesitate for any reason to return a
12 verdict of not guilty. But, on the other hand, if you should
13 find that the government has met its burden of proving the
14 defendant's guilt beyond a reasonable doubt, you should not
15 hesitate because of sympathy or any other reason to return a
16 verdict of guilty.

17 The defendant, Bruce Garelick, has been formally
18 charged in an indictment. An indictment is not evidence. As I
19 instructed you at the outset of this case, the indictment is a
20 charge or accusation. It merely describes the charges made
21 against a defendant. An indictment is a formal method of
22 bringing a case into court for trial and determination by a
23 jury. It creates no presumption that a crime was committed,
24 and no inference of any kind may be drawn from an indictment.
25 You may not consider an indictment as any evidence of the

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1 defendant's guilt. The fact that the defendant is the subject
2 of this indictment and is on trial here may not be used against
3 him in any way whatsoever.

4 Before you begin your deliberations, you will be
5 provided with a copy of the indictment. I will not read the
6 entire indictment to you at this time. Rather, I will first
7 summarize the offenses charged in the indictment and then
8 explain in detail the elements of each of the offenses.

9 The indictment contains five counts. Each count
10 charges a separate offense or crime. You must, therefore,
11 consider each count separately and you must return a separate
12 verdict on each count.

13 Count One charges the defendant with conspiring to
14 commit securities fraud through insider trading in the
15 securities of Digital World Acquisition Corporation, or DWAC.

16 Counts Two through Four charge the defendant with
17 securities fraud under Title 15 of the United States Code, and
18 Count Five charges the defendant with securities fraud under
19 Title 18 of the United States Code. Specifically, the
20 indictment alleges that the defendant committed securities
21 fraud by misappropriating inside information from DWAC and
22 Benessere Capital Acquisition Corporation and using that
23 information to purchase DWAC securities himself and to tip
24 Michael Shvartsman and Eric Hannelius so they could use that
25 information to purchase DWAC securities.

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1 The theory of the defense in this case is that when he
2 purchased DWAC securities between September 3 and September 23,
3 2021, Mr. Garelick believed in good faith that he was not in
4 possession of material nonpublic information and that he was
5 therefore permitted by law to trade DWAC securities. Thus,
6 under the defense's theory, the defendant did not knowingly,
7 willfully, and intentionally engage in securities fraud when he
8 personally traded in DWAC securities.

9 In addition, Mr. Garelick maintains that he did not
10 disclose any information about DWAC that he knew to be material
11 and nonpublic to any other people. Thus, under the defense's
12 theory, Mr. Garelick did not agree with anyone else to commit
13 securities fraud, nor did he aid or abet any securities fraud
14 by anyone else.

15 You will note that the indictment alleges that certain
16 acts occurred on or about various dates or involved specific
17 amounts of securities or money. It does not matter if the
18 evidence you heard at trial indicates that a particular act
19 occurred on a different date or involved a different amount of
20 securities or money. The law requires only a substantial
21 similarity between the dates alleged in the indictment and the
22 dates established by the evidence, or the amounts of securities
23 or money alleged in the indictment and the amounts established
24 by the evidence.

25 You must return a separate verdict of guilty or not

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1 guilty for each count charged. Whether you find the defendant
2 guilty or not guilty as to one offense should not affect your
3 verdict as to any other offense. You must analyze and evaluate
4 the evidence separately as to each count.

5 As I have told you, Count One of the indictment
6 charges the defendant with the crime of conspiracy. Counts Two
7 through Five charge him with what we call substantive crimes.

8 The crime of conspiracy is different from a
9 substantive crime. A conspiracy charge, generally speaking,
10 alleges that two or more persons agreed together to accomplish
11 some unlawful objective. The focus of a conspiracy count,
12 therefore, is on whether there was an unlawful agreement. A
13 substantive count, on the other hand, charges a defendant with
14 the actual commission of an offense. A substantive offense
15 therefore can be committed by a single person. It need not
16 involve any agreement with anyone else.

17 A conspiracy to commit a crime is an entirely separate
18 and different offense from a substantive crime, the commission
19 of which may be an objective of a conspiracy. Since the
20 essence of the crime of conspiracy is an agreement or an
21 understanding to commit a crime, it does not matter if the
22 crime that was the objective of the conspiracy was ever
23 actually committed. In other words, for a conspiracy charge,
24 there is no need to prove that the crime or crimes that were
25 the objective or objectives of the conspiracy actually were

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1 committed. By contrast, conviction on a substantive count
2 requires proof that the crime charged actually was committed,
3 but does not require proof of an agreement. A defendant may be
4 guilty of both conspiracy and the substantive crime, one but
5 not the other, or neither. You therefore must consider each
6 count separately.

7 Now for clarity, I'm going to instruct you first with
8 respect to the counts that charge substantive crimes, Counts
9 Two through Five. Then I will instruct you on the conspiracy
10 count, Count One.

11 II. Counts Two through Four--Title 15 Securities
12 Fraud.

13 Let us turn first to Counts Two through Four. Counts
14 Two through Four charge the defendant with securities fraud
15 under Title 15 of the United States Code. Counts Two through
16 Four also charge the crimes of aiding and abetting the
17 commission of insider trading. Later, I will instruct you on
18 those crimes.

19 Count Two concerns the defendant's own trades. Count
20 Two charges the defendant with engaging in insider trading by
21 using material nonpublic information to purchase DWAC
22 securities himself, in violation of a duty of trust and
23 confidence that the defendant owed DWAC and Benessere.

24 Counts Three and Four charge the defendant with
25 engaging in insider trading by tipping others with material

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1 nonpublic information that the defendant misappropriated from
2 DWAC and Benessere, in anticipation of a personal benefit and
3 with the expectation that those individuals would use that
4 information to trade in securities; Count Three charges the
5 defendant with engaging in this form of insider trading in
6 connection with Michael Shvartsman's purchase of DWAC warrants;
7 and Count Four charges the defendant with engaging in this form
8 of insider trading in connection with Eric Hannelius's purchase
9 of DWAC units and warrants.

10 In order to find the defendant guilty on a count of
11 Title 15 securities fraud, you must find that the government
12 has proven each of the following elements for that count beyond
13 a reasonable doubt:

14 First, that in connection with the purchase or sale of
15 a security, the defendant employed a device, scheme, or
16 artifice to defraud, or engaged in an act, practice, or course
17 of business that operated, or would operate, as a fraud or
18 deceit;

19 Second, that when he engaged in this scheme, the
20 defendant acted knowingly, willfully, and with an intent to
21 defraud; and

22 Third, that in furtherance of the scheme, the
23 defendant knowingly used, or caused to be used, any means or
24 instrument of transportation or communication in interstate
25 commerce, or the use of the mails, or the use of any facility

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1 of any national securities exchange.

2 A few words about the first element: the employment of
3 a scheme, device, or artifice to defraud. A device or artifice
4 to defraud is a plan to accomplish a fraudulent objective. The
5 specific device, scheme, or artifice to defraud, or act,
6 practice, or course of business that the government alleges the
7 defendant employed in connection with Counts Two through Four
8 is known as insider trading.

9 For these charges, an insider is a person who
10 possesses material nonpublic information about a publicly
11 traded company by virtue of a relationship that involves a duty
12 of trust and confidence. When a person possesses such
13 information and that person also has a duty of trust and
14 confidence to the source of the information, the law forbids
15 him from (1) buying or selling the securities in question on
16 the basis of that information, or (2) disclosing that
17 information to another person in anticipation of a personal
18 benefit and with an expectation that the recipient will either
19 trade in such securities on the basis of that information or
20 cause others to do so.

21 The indictment alleges that the defendant owed a duty
22 of trust and confidence to DWAC and Benessere pursuant to the
23 confidentiality agreements he signed with them and to DWAC and
24 its shareholders in his capacity as a director of DWAC, and
25 that he misappropriated and misused material nonpublic

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1 information that was protected by the confidentiality
2 agreements or that he received in his capacity as a director at
3 DWAC by using it to place trades for himself and to tip others,
4 with the anticipation of receiving a personal benefit and an
5 expectation that those others would use the information to
6 trade.

7 Count Two involves the defendant's alleged use of
8 material nonpublic information himself, for his own trades. In
9 order to find that the government has established the first
10 element of Count Two, you must find that the government has
11 proven beyond a reasonable doubt:

12 First, that the defendant had a relationship of trust
13 and confidence with DWAC or Benessere;

14 Second, that the defendant obtained information from
15 DWAC or Benessere by virtue of his relationship of trust and
16 confidence with that entity, that the entity expected him to
17 keep confidential;

18 Third, that the information was material;

19 Fourth, that the information was nonpublic; and

20 Fifth, that the defendant violated his duty of trust
21 and confidence to DWAC or Benessere by using the material
22 nonpublic information to trade in DWAC securities.

23 To determine whether the government has proven the
24 existence of a relationship of trust and confidence, you must
25 look to all of the facts and circumstances and ask whether both

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1 the defendant and DWAC or Benessere recognized that their
2 relationship involved trust and confidence. A person will be
3 deemed an "insider" if the government establishes that he had
4 assumed a relationship affording him access to material
5 confidential information intended to be available only for a
6 corporate purpose and not for his personal benefit. Thus, it
7 is the confidential nature of the relationship that determines
8 whether a person is an insider, and not merely the title he
9 holds. Here, the parties have stipulated that the defendant
10 was a director of DWAC and that, as a director of DWAC, the
11 defendant owed a duty of trust and confidence to DWAC and its
12 shareholders.

13 I further instruct you, as a matter of law, that an
14 express agreement to keep certain information confidential
15 gives rise to a duty of trust and confidence between the
16 parties to that agreement with respect to the information
17 protected by that agreement. Breaching such an agreement,
18 however, does not constitute a device, scheme, or artifice to
19 defraud if the defendant fully discloses--to whomever the duty
20 is owed--his intent to personally use or disclose the
21 confidential information.

22 Information is material if a reasonable investor would
23 consider it important in deciding whether to buy, sell, or hold
24 securities. Put differently, information is material if a
25 reasonable investor would have viewed the information as having

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1 significantly altered the total mix of information then
2 available. Material information includes any fact which,
3 viewed objectively, might affect the value of the corporation's
4 stock or other securities. Materiality of the information is
5 judged as of the time the information was misappropriated.
6 With respect to speculative information or events, like the
7 possibility of a merger, materiality will depend at any given
8 time upon a balancing of both the indicated probability that
9 the event will occur and the anticipated magnitude of the event
10 in light of the totality of the company activity.

11 Information is nonpublic if, at the time it is used,
12 it is not available to the public through such sources as press
13 releases, trade publications, analysts' reports, newspapers,
14 magazines, television, radio, websites, rumors, word of mouth,
15 or other similar sources. In evaluating what information a
16 company has treated as confidential, you may consider written
17 company policies, contracts, trainings at the company, measures
18 the company has taken to guard the information's secrecy, how
19 insiders at the company treated the information, the extent to
20 which the information is known outside the company's place of
21 business, the ways in which other employees may access and use
22 the information, and any other relevant facts and
23 circumstances.

24 However, the fact that information has not appeared in
25 a newspaper or other widely available public medium does not

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1 alone determine whether the information is nonpublic.
2 Sometimes a corporation is willing to make information public
3 other than by disseminating it in a newspaper or other
4 publication. Information is not necessarily nonpublic simply
5 because there has been no formal announcement or because only a
6 few people have been made aware of it.

7 On the other hand, the confirmation by an insider of
8 unconfirmed facts or rumors, even if reported in a
9 newspaper--may itself be inside information. A tip from a
10 corporate insider that is more reliable or specific than public
11 rumors is nonpublic information despite the existence of such
12 rumors in the media or investment community. Whether
13 information is nonpublic is an issue of fact for you to decide.

14 In considering whether the defendant used the
15 information to trade securities, the government must prove that
16 the defendant was aware of the material nonpublic information
17 when making the purchase or sale of DWAC securities and the
18 information in some way informed the investment decision. You
19 need determine only that the information was a factor in the
20 decision to trade--it need not have been the only factor.

21 Counts Three and Four involve the defendant's alleged
22 tipping of material nonpublic information to others. In order
23 to find that the government has proven the first element of
24 Counts Three and Four, you must find that the government has
25 proven beyond a reasonable doubt as to whichever count you are

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1 considering:

2 First, that the defendant had a relationship of trust
3 and confidence with DWAC or Benessere;

4 Second, that the defendant obtained information from
5 DWAC or Benessere by virtue of his relationship of trust and
6 confidence with that entity, that the entity expected him to
7 keep confidential;

8 Third, that the information was material;

9 Fourth, that the information was nonpublic;

10 Fifth, that the defendant violated his duty of trust
11 and confidence to DWAC or Benessere by disclosing this
12 information to the tippee each count asks you to consider--that
13 is, Michael Shvartsman or Eric Hannelius;

14 Sixth, that the defendant expected that the tippee you
15 are considering would use this information to trade DWAC
16 securities or to cause others to trade DWAC securities and that
17 the tippee did, in fact, use that information to trade DWAC
18 securities; and

19 Seventh, that the defendant, in providing this
20 information to the tippee in question, anticipated receiving a
21 personal benefit in return.

22 I have already defined the concepts of a relationship
23 of trust and confidence, material information, nonpublic
24 information, and duty to you in my instructions for Count Two,
25 and those definitions apply here as well.

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1 As to the sixth requirement, you must determine
2 whether the government has proven beyond a reasonable doubt
3 that the defendant expected that the tippee in question would
4 use or cause others to use the information to trade DWAC
5 securities. Direct proof that the defendant expected that the
6 tippee in question would use the information to trade, or cause
7 others to trade DWAC securities is not required. The
8 defendant's knowledge may be established by circumstantial
9 evidence. Further, it is not necessary for the government to
10 prove that the defendant knew to a certainty that the tippee
11 would use the information to trade or to cause others to trade
12 the securities of DWAC. It is sufficient for the government to
13 prove that the defendant expected that the tippee would use the
14 information to his advantage by trading in DWAC securities (or
15 causing others to do so).

16 The government must also prove that the tippee did in
17 fact trade DWAC securities on the basis of the inside
18 information provided by the defendant. In this context, you
19 may conclude that a trade was made "on the basis of inside
20 information" if the tippee was aware of the information when
21 making the purchase or sale and the information in some way
22 informed the tippee's investment decision.

23 Finally, you must determine whether the defendant
24 anticipated receiving a personal benefit in return for
25 providing material nonpublic information to the tippee. The

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1 benefit does not need to be financial or tangible in nature.
2 It could include, for example, a *quid pro quo* exchange of
3 information, maintaining a useful networking contact, or
4 improving the defendant's reputation in a way that would
5 translate into obtaining future financial or business benefits.
6 In addition, a defendant receives a personal benefit when he
7 discloses inside information with an intention to benefit the
8 recipient, such as when he discloses inside information as a
9 gift to a relative or friend. In such circumstances, the tip
10 and trade resemble trading by the insider himself followed by a
11 gift of the profits to the recipient.

12 However, I must caution you that an insider's
13 disclosure of material nonpublic information, standing alone,
14 does not establish this benefit factor. Even where a person
15 has a duty of trust and confidence, meaning that he was
16 required to keep information confidential, his breach of the
17 duty is not fraudulent unless he discloses the information with
18 the expectation that the tippee would use the information to
19 purchase or sell the securities of DWAC or cause others to do
20 so and with the intention that he receive a personal benefit in
21 return. While you need not be unanimous as to what particular
22 benefit the defendant received or expected to receive as a
23 result of his disclosures to the tippee or tippees, you must
24 all agree that the defendant received or expected to receive a
25 benefit of some kind and that his reason was personal rather

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1 than one authorized by DWAC or Benessere.

2 The government must establish each of these factors
3 beyond a reasonable doubt for you to determine that the
4 government has sustained its burden of proof as to the first
5 element on Counts Two through Four. If, however, the
6 government has not established that factor beyond a reasonable
7 doubt, then you must find that the government did not satisfy
8 its burden of proof and you must return a verdict of not guilty
9 as to the count you are considering.

10 The second element of the substantive securities fraud
11 charges in Counts Two through Four relates to the defendant's
12 state of mind. If you find that the government has met its
13 burden of proving that the defendant engaged in the charged
14 insider trading scheme--that is, the factor I just
15 explained--the government must then prove beyond a reasonable
16 doubt that the defendant engaged in the scheme knowingly,
17 willfully, and with an intent to defraud.

18 To act "knowingly" means to act voluntarily and
19 deliberately, rather than by mistake, accident, ignorance, or
20 carelessness. The defendant must have known that he was in
21 possession of information that was material, nonpublic, and
22 subject to a duty of trust and confidence.

23 To act "willfully" means to act knowingly and
24 purposely, with an intent to do something the law forbids; that
25 is to say, with a bad purpose either to disobey or to disregard

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1 the law. It is not necessary that the defendant knew that he
2 was violating a particular law. It is enough if he was aware
3 that what he was doing was, in general, unlawful.

4 "Intent to defraud" in the context of the securities
5 laws means to act knowingly and with intent to deceive. In
6 order to find that the defendant acted with intent to defraud,
7 you must find that he knew of the fraudulent nature of the
8 scheme and acted with the intent that it succeed.

9 Whether the defendant acted knowingly, willfully, and
10 with intent to defraud is a question of fact for you to
11 determine, like any other fact question. Direct proof is not
12 required. Knowledge and criminal intent may, like any other
13 fact, be established by circumstantial evidence.

14 Because an essential element of the crime charged is
15 intent to defraud, good faith on the part of the defendant is a
16 complete defense to a charge of insider trading. That is, the
17 law is not violated if the defendant held an honest belief that
18 his actions were proper and not in furtherance of any unlawful
19 scheme. A person who acts on such a belief or opinion honestly
20 held that turns out to be wrong also lacks an intent to
21 defraud. However misleading or deceptive a plan may be, it is
22 not fraudulent if it was devised or carried out in good faith.
23 The defendant does not bear the burden of proving his good
24 faith; it remains at all times the government's burden of
25 proof, beyond a reasonable doubt, that the defendant acted

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1 knowingly, willfully, and with intent to defraud.

2 With respect to Counts Two through Four of the
3 indictment, the third and final element that the government
4 must prove beyond a reasonable doubt is that the defendant used
5 or caused to be used some instrumentality of interstate
6 commerce, such as an interstate telephone call or email, use of
7 the mails, or use of a facility of a national securities
8 exchange, such as a securities trade made on the New York Stock
9 Exchange or NASDAQ, in furtherance of the insider trading
10 scheme.

11 The defendant himself does not have to have made the
12 interstate call, sent the mailing, or made the trade on the
13 stock exchange; anyone can do it as long as it furthers the
14 insider trading scheme. If the defendant knew or could
15 reasonably foresee that the insider trading scheme would result
16 in the use of some instrumentality of interstate commerce,
17 including the use of the telephone, the internet, or the mail,
18 that is sufficient to show that the defendant caused such use.

19 As to each of Counts Two through Four, if you find
20 that the government has proven each element of Title 15
21 securities fraud beyond a reasonable doubt, then you must find
22 the defendant guilty of that count. On the other hand, if you
23 find that the government has failed to prove any element of any
24 count beyond a reasonable doubt, then you must find the
25 defendant not guilty of that count.

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1 III. Count Five--Title 18 Securities Fraud.

2 Count Five charges the defendant with securities fraud
3 under Title 18 of the United States Code. Count Five also
4 charges the crime of aiding and abetting the commission of
5 securities fraud. Later, I will instruct you on that crime.

6 In Count Five, the defendant is charged with
7 participating from at least in or about June 2021 through in or
8 about November 2021 in a scheme to defraud DWAC or Benessere by
9 converting to his own use material nonpublic information that
10 was the property of DWAC or Benessere to use, in whole or in
11 part, to execute transactions in DWAC securities. It is not
12 necessary for the government to prove that the scheme lasted
13 throughout the entire period alleged, but only that it existed
14 for some period within that time frame.

15 In order to find the defendant guilty on Count Five,
16 you must find that the government has proven each of the
17 following elements for that count beyond a reasonable doubt:

18 First, that the defendant executed a scheme or
19 artifice to defraud or to obtain money or property by
20 materially false and fraudulent pretenses, representations, or
21 promises;

22 Second, that the defendant participated in the scheme
23 or artifice to defraud knowingly and with an intent to defraud;

24 Third, that the scheme to defraud or to obtain money
25 or property through fraudulent means was in connection with the

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1 purchase or sale of securities.

2 With respect to the first element, a "scheme" is
3 merely a plan to accomplish an object. A "scheme to defraud"
4 exists where an individual engages in any plan, device, or
5 course of action to accomplish a fraudulent objective. "Fraud"
6 is a general term that embraces all efforts and means that
7 individuals devise to deprive another of money or property by
8 deception. It includes fraudulently embezzling or fraudulently
9 converting for one's own use property entrusted to one's care
10 by, and belonging to, another. The undisclosed
11 misappropriation of property, in breach of a fiduciary or
12 similar duty of trust and confidence, constitutes fraud.

13 The scheme to defraud must have money or property as
14 its object. I instruct you that confidential business
15 information can be considered "property" for purposes of Count
16 Five if it had commercial value to DWAC or Benessere. The fact
17 that a company cannot commercially exploit information by
18 trading on it does not mean the information has no commercial
19 value to the company. In determining whether information is
20 confidential business information of a company, you may
21 consider the time and resources the company expended in
22 generating and maintaining the confidentiality of the
23 information, including any policies and measures the business
24 has taken to guard the information's secrecy.

25 The second element that the government must prove with

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1 respect to Count Five is that the defendant participated in the
2 scheme knowingly and with an intent to defraud. I have
3 previously instructed you regarding the meaning of "knowingly"
4 and with "intent to defraud" for purposes of Title 15
5 securities fraud. You should apply those same instructions
6 here. Again, since an essential element of the crime charged
7 is intent to defraud, it follows that good faith on the part of
8 the defendant is a complete defense.

9 The final element that the government must prove with
10 respect to Count Five is that the scheme to defraud was
11 connected to the purchase or sale of securities of a company
12 with a class of securities registered under Section 12 of the
13 Securities Exchange Act of 1934. A scheme to defraud is "in
14 connection with" a security if you find the alleged conduct
15 "touched upon" a securities transaction.

16 The parties have stipulated that DWAC's securities
17 were those of a company with a class of securities registered
18 under Section 12 of the Securities Exchange Act of 1934.

19 In addition to charging the defendant with substantive
20 counts of Title 15 securities fraud and Title 18 securities
21 fraud, all of the substantive counts I have instructed you on
22 today also charge the defendant with what is called aiding and
23 abetting. Aiding and abetting is a theory of liability that
24 permits a defendant to be convicted of a specific crime if the
25 defendant, while not himself committing the crime, assisted

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1 another person or persons in committing the crime.

2 If the government proves beyond a reasonable doubt
3 that the defendant committed a given substantive count, then
4 you need not consider aiding and abetting with respect to that
5 count. If, however, you find that the government has not
6 proven beyond a reasonable doubt that the defendant engaged in
7 securities fraud for purposes of a particular substantive
8 count, then you should consider whether the government has
9 proven beyond a reasonable doubt that the defendant aided and
10 abetted someone else in the commission of securities fraud as
11 alleged in that count.

12 Under the federal aiding and abetting statute, whoever
13 "aids, abets, counsels, commands, induces or procures" the
14 commission of an offense is punishable as a principal. That
15 means a person who aids and abets another to commit a
16 substantive crime is just as guilty of that crime as if he had
17 personally committed it. A person aids or abets a crime if he
18 knowingly does some act for the purpose of aiding or
19 encouraging the commission of that crime, with the intention of
20 causing the crime charged to be committed. To "counsel" means
21 to give advice or recommend. To "induce" means to lead or move
22 by persuasion or influence as to some action or state of mind.
23 To "procure" means to bring about by unscrupulous or indirect
24 means. To "cause" means to bring something about, to effect
25 something.

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1 The first requirement is that another person has
2 committed the crime at issue. Obviously, no one can be
3 convicted of aiding and abetting the criminal acts of another
4 if no crime was committed by the other person. But if you do
5 find that a crime was committed by another person, then you
6 must consider whether the defendant aided or abetted the
7 commission of the crime.

8 I emphasize, however, that to aid or abet another to
9 commit a crime, it is necessary that the defendant willfully
10 and knowingly associated himself in some way with the crime,
11 and that he willfully and knowingly sought by some act to help
12 make the crime succeed. In the aiding and abetting context,
13 participation in a crime is willful if action is taken
14 voluntarily and intentionally.

15 An aider and abettor must have some interest in the
16 criminal venture and must take some action to assist or
17 encourage the commission of the crime. The mere presence of a
18 person where a crime is being committed, even coupled with
19 knowledge by that person that a crime is being committed, or
20 the mere acquiescence by a person in the criminal conduct of
21 others, even with guilty knowledge, is not sufficient to
22 establish aiding and abetting.

23 To determine whether the defendant aided and abetted
24 the commission of the crime with which he is charged, ask
25 yourself these questions:

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1 Did someone other than the defendant commit the crime
2 at issue?

3 Did the defendant participate in the crime charged as
4 something he wished to bring about?

5 Did he associate himself with the criminal venture
6 knowingly and willfully?

7 Did he seek by his actions to make the criminal
8 venture succeed?

9 If he did, then the defendant is an aider and abettor,
10 and therefore guilty of the offense. If, on the other hand,
11 your answer to any one of these questions is "no," then the
12 defendant is not an aider and abettor, and is not guilty as an
13 aider and abettor.

14 IV. Count One--Conspiracy to Commit Securities Fraud.

15 Now let us turn back to Count One, the conspiracy
16 charge. Count One charges the defendant with conspiring to
17 commit Title 15 securities fraud and Title 18 securities fraud.

18 To meet its burden of proof with respect to Count One,
19 the government must prove each of the following three elements
20 beyond a reasonable doubt:

21 First, the existence of the conspiracy charged in the
22 indictment—in other words, that there was in fact an agreement
23 or understanding to commit at least one of the object crimes
24 charged in the indictment;

25 Second, that the defendant intentionally joined and

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1 participated in the conspiracy during the applicable time
2 period; and

3 Third, that at least one of the co-conspirators
4 knowingly committed an overt act in furtherance of the
5 conspiracy.

6 The first element is the existence of a conspiracy. A
7 conspiracy is an agreement, or an understanding, by two or more
8 persons to accomplish one or more unlawful objectives by
9 working together. To prove that a conspiracy existed, the
10 government must prove beyond a reasonable doubt that the
11 defendant and one or more co-conspirators explicitly or
12 implicitly agreed to commit at least one of the two alleged
13 unlawful objects.

14 For the government to establish this element, you need
15 not find that the alleged members of the conspiracy met
16 together and entered into any express or formal agreement.
17 Similarly, you need not find that the alleged conspirators
18 stated, in words or writing, what the scheme was, its object or
19 purpose, or every precise detail of the scheme or the means by
20 which its object or purpose was to be accomplished. What the
21 government must prove is that there was a mutual understanding,
22 either spoken or unspoken, between two or more people to
23 cooperate with each other to accomplish one or more of the
24 unlawful objectives alleged, namely (1) to commit Title 15
25 securities fraud or (2) to commit Title 18 securities fraud. I

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1 have already instructed on the elements of these alleged
2 crimes. You need not find that the conspirators agreed to
3 accomplish both of these objects. An agreement to accomplish
4 one of these objects is sufficient. However, you must be
5 unanimous as to at least one of the two alleged objectives of
6 the conspiracy. In other words, you all have to be in
7 agreement as to at least one specific object of the conspiracy
8 before you can find the conspiracy charged in the indictment
9 existed. If the government fails to prove beyond a reasonable
10 doubt that at least one of the unlawful objectives alleged in
11 Count One was in fact an objective of the conspiracy, or if you
12 cannot unanimously agree as to which of the unlawful objects
13 alleged in the indictment has been proven beyond a reasonable
14 doubt, then you must find the defendant not guilty as to the
15 conspiracy charge. Moreover, if you conclude that "an
16 agreement" existed but that its purpose, even if unlawful, was
17 not one of the specific unlawful objectives alleged in the
18 indictment, you must also find the defendant not guilty as to
19 Count One.

20 You may, of course, find that the existence of an
21 agreement to commit securities fraud has been established by
22 direct proof. However, you may also infer its existence from
23 circumstantial evidence and the conduct of the parties
24 involved. Accordingly, in determining whether there has been
25 an unlawful agreement, you may judge the facts and conduct of

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1 the alleged members of the conspiracy that are done to carry
2 out an apparent criminal purpose.

3 A conspiracy is often referred to as a partnership in
4 crime. Thus, as in other types of partnerships, when people
5 enter into a conspiracy to accomplish an unlawful end, each and
6 every member becomes an agent for the other conspirators in
7 carrying out the conspiracy. Accordingly, the reasonably
8 foreseeable acts, declarations, statements, and omissions of
9 any member of the conspiracy and in furtherance of the common
10 purpose of the conspiracy, are deemed under the law to be the
11 acts of all members, and all of the members are responsible for
12 such acts, declarations, statements, and omissions.

13 If you find that the government has proven beyond a
14 reasonable doubt the first element of Count One--that a
15 conspiracy to commit securities fraud existed--then you must
16 consider the second element of Count One. The second element
17 the government must prove beyond a reasonable doubt to
18 establish the offense of conspiracy is that the defendant
19 became a member of the conspiracy knowingly, willfully, and
20 with intent to further its unlawful purpose or objective.

21 I already defined "knowingly" and "willfully" in
22 charging you on Counts Two through Four. You will apply those
23 same definitions here.

24 In deciding whether the defendant was, in fact, a
25 member of the conspiracy, you should consider whether the

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1 defendant knowingly joined the conspiracy. Did he participate
2 in it with knowledge of its unlawful purpose and with the
3 specific intention of furthering its objective?

4 It is important for you to note that the defendant's
5 participation in the conspiracy must be established by
6 independent evidence of his own acts or statements, as well as
7 those of the other alleged co-conspirators, and the reasonable
8 inferences that may be drawn from them. A defendant's
9 knowledge is a matter of inference from the facts proven. In
10 that connection, I instruct you that to become a member of the
11 conspiracy, a defendant need not have known the identities of
12 each and every other member, nor need he have been apprised of
13 all of their activities.

14 Moreover, the defendant need not have been fully
15 informed as to all of the details, or the scope of the
16 conspiracy to justify an inference of knowledge on his part.
17 Furthermore, the defendant need not have joined in all of the
18 conspiracy's unlawful objectives.

19 The extent of a defendant's participation has no
20 bearing on the issue of a defendant's guilt. A conspirator's
21 liability is not measured by the extent or duration of his
22 participation. Indeed, each member may perform separate and
23 distinct acts and may perform them at different times. Some
24 conspirators play major roles, while others play minor roles in
25 the scheme. An equal role is not what the law requires. In

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1 fact, even a single act may be sufficient to draw a defendant
2 within the ambit of the conspiracy.

3 I want to caution you, however, that a defendant's
4 mere presence at the scene of the alleged crime does not by
5 itself make him a member of the conspiracy. Similarly, mere
6 association with one or more members of the conspiracy does not
7 automatically make a defendant a member, even if he knows that
8 the conspiracy exists. A person may know or be friendly with a
9 criminal without being a criminal himself.

10 Mere similarity of conduct or the fact that they may
11 have assembled and discussed common aims and interests does not
12 necessarily establish membership in the conspiracy.

13 I also want to caution you that mere knowledge or
14 acquiescence without participation in the unlawful plan is not
15 sufficient. Moreover, the fact that the acts of a defendant or
16 any other person without knowledge merely happened to further
17 the purpose or objectives of the conspiracy does not make that
18 person a member. More is required under the law. What is
19 necessary for a person to be a member of the conspiracy is that
20 the person must have participated with knowledge of the purpose
21 or objectives of the conspiracy and with the intention of
22 aiding in the accomplishment of that unlawful end.

23 (Continued on next page)
24
25

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1 THE COURT: The government is not required to prove
2 that the members of the alleged conspiracy were successful in
3 achieving the object or objects of the conspiracy.

4 The third element that the government must prove
5 beyond a reasonable doubt to establish the offense of
6 conspiracy charged in Count One is that one of the members of
7 the conspiracy knowingly committed at least one overt act in
8 order to further the object of the conspiracy. The purpose of
9 the overt act requirement is clear. There must have been
10 something more than mere agreement; some overt step or action
11 must have been taken by at least one of the conspirators in
12 furtherance of the conspiracy.

13 For this element, you need not find that the defendant
14 in this case committed the overt act. It is sufficient for the
15 government to show that one of the conspirators knowingly
16 committed an overt act in furtherance of the conspiracy, since
17 such an act becomes, in the eyes of the law, the act of all of
18 the members of the conspiracy. Furthermore, you should bear in
19 mind that the overt act, standing alone, may be an innocent,
20 lawful act. An apparently innocent act may shed its harmless
21 character if it is a step in carrying out, promoting, aiding,
22 or assisting the conspiratorial scheme. You are therefore
23 instructed that the overt act does not have to be an act that,
24 in and of itself, is criminal.

25 V. Venue.

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1 With respect to any given count you are considering,
2 the government, in addition to proving the essential elements
3 of that charge, must also prove that at least one act in
4 furtherance of that charge occurred in the Southern District of
5 New York. This requirement is called venue. You must
6 determine the satisfaction of the venue requirement separately
7 for each count.

8 The Southern District of New York is the judicial
9 district that includes Manhattan, as well as several other
10 counties not relevant here.

11 The government does not have to prove that a completed
12 crime was committed within the Southern District of New York,
13 or that the defendant was ever in the Southern District of New
14 York. It is sufficient to satisfy the venue requirement if any
15 act in furtherance of the crime charged occurred in this
16 district. The act itself may not be a criminal act. It could
17 include, for example, processing or executing a securities
18 trade within this district, and the act need not have been
19 taken by the defendant, so long as the act was part of the
20 crime that you find the defendant committed. Venue is proper
21 if, one, the defendant intentionally knowingly caused such an
22 act in furtherance of the charged offense to occur in this
23 district, or two, it was reasonably foreseeable that such an
24 act would occur in this district.

25 Unlike the elements of the offenses which must be

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1 proven beyond a reasonable doubt, the government is only
2 required to prove venue by a preponderance of the evidence. A
3 preponderance of the evidence means that it is more probable
4 than not that some act in furtherance of the crime you are
5 considering occurred in this district. If you find that the
6 government has failed to prove this venue requirement with
7 respect to a particular charge, then you must acquit the
8 defendant of that charge.

9 Members of the jury, I have some additional
10 instructions I'm going to give you. We're right now going to
11 take a 30-second stretch break before I give you those
12 additional instructions. Everybody can take the stretch break.

13 For those who are following on the written charge, I'm
14 on page 31.

15 VI. Additional Instructions.

16 I'm now going to briefly discuss evaluating the
17 credibility of witnesses.

18 You have had the opportunity to observe the witnesses.
19 It is now your job to decide how believable or credible each
20 witness was in his or her testimony. You are the sole judges
21 of the credibility of each witness and of the importance of his
22 or her testimony. How do you judge the credibility of
23 witnesses? There's no magic formula.

24 You should carefully scrutinize all of the testimony
25 of each witness, the circumstances under which each witness

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1 testified, the impression the witness made when testifying, the
2 relationship of the witness to the controversy and the parties,
3 the witness's bias or impartiality, the reasonablenesses of the
4 witness's statement, the strength or weakness of the witness's
5 recollection viewed in light of all the other testimony and
6 evidence, and any other matter in evidence that may help you to
7 decide the truth and importance of each witness's testimony.

8 In other words, what you must try to do in deciding
9 the credibility is to size a witness up in light of his or her
10 demeanor, the explanations given, and all of the other evidence
11 in the case. You should use your common sense, your good
12 judgment, and your everyday experiences in life to make
13 credibility determinations.

14 In passing upon the credibility of a witness, you may
15 also take into account any inconsistencies or contradictions as
16 to material matters in his or her testimony.

17 If you find that any witness has willfully testified
18 falsely as to any material fact, you have the right to reject
19 the testimony of that witness in its entirety. On the other
20 hand, even if you find that a witness has testified falsely
21 about one matter, you may reject as false that portion of his
22 or her testimony and accept as true any other portion of the
23 testimony which commends itself to your belief or which you may
24 find corroborated by other evidence in this case. A witness
25 may be inaccurate, contradictory, or even untruthful in some

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1 aspects, and yet be truthful and entirely credible in other
2 aspects of his or her testimony.

3 The ultimate question for you to decide in passing
4 upon credibility is: did the witness tell the truth before you?
5 It is for you to say whether his or her testimony at trial is
6 truthful in whole or in part.

7 In deciding whether to believe a witness, you should
8 specifically note any evidence of hostility or affection that
9 the witness may have towards one of the parties. Likewise, you
10 should consider evidence of any other interest or motive that
11 the witness may have in cooperating with a particular party.
12 You should also take into account any evidence of any benefit
13 that a witness may receive from the outcome of the case.

14 It is your duty to consider whether the witness has
15 permitted any such bias or interest to color his or her
16 testimony. In short, if you find that a witness is biased, you
17 should view his or her testimony with caution, weigh it with
18 care, and subject it to close and searching scrutiny.

19 Of course the mere fact that a witness is interested
20 in the outcome of the case does not mean he or she has not told
21 the truth. It is for you to decide from your observations and
22 applying your common sense and experience and all the other
23 considerations mentioned whether the possible interest of any
24 witness has intentionally or otherwise colored or distorted his
25 or her testimony. You are not required to disbelieve an

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1 interested witness; you may accept as much of his or her
2 testimony as you deem reliable and reject as much as you deem
3 unworthy of acceptance.

4 You have heard evidence during the trial that
5 witnesses had discussed the facts of the case and their
6 testimony with the lawyers before the witness appeared in
7 court. Although you may consider that fact when you are
8 evaluating a witness's credibility, I should tell you that
9 there is nothing either unusual or improper about a witness
10 meeting with lawyers before testifying, so that the witness can
11 be made aware of the subjects that he or she will be questioned
12 about, focus on those subjects, and have the opportunity to
13 review relevant exhibits before being questioned about them.
14 In fact, it would be unusual for a lawyer to call a witness
15 without such consultation. Again, the weight you give to the
16 fact or nature of the witness's preparation for his or her
17 testimony and what inferences you draw from such preparation
18 are matters completely within your discretion.

19 You've heard the testimony of a law enforcement
20 official. The fact that a witness may be employed as a law
21 enforcement official does not mean that his or her testimony is
22 necessarily deserving of more or less consideration or greater
23 or lesser weight than that of an ordinary witness. In this
24 context, the defendant is allowed to try to attack the
25 credibility of such a witness on the ground that his or her

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1 testimony may be colored by a personal or professional interest
2 in the outcome of the case. It is your decision, after
3 reviewing all the evidence, whether to accept the testimony of
4 the law enforcement witness and to give that testimony whatever
5 weight, if any, you find that it deserves.

6 The fact that one party called more witnesses and
7 introduced more evidence than the other does not mean that you
8 should necessarily find the facts in favor of the side offering
9 the most witnesses. By the same token, you do not have to
10 accept the testimony of any witness who has not been
11 contradicted or impeached if you find the witness not to be
12 credible. You also have to decide which witnesses to believe
13 and which facts are true. To do this, you must look at all the
14 evidence, drawing upon your own common sense and personal
15 experience. I've just discussed the criteria for evaluating
16 credibility; keep in mind that the burden of proof is always on
17 the government and the defendant is not required to call any
18 witnesses or offer any evidence since he is presumed to be
19 innocent.

20 A defendant in a criminal case never has any duty to
21 testify or come forward with any evidence. This is because, as
22 I have told you, it is the government's burden to prove the
23 defendant guilty beyond a reasonable doubt, and that burden
24 remains on the government at all times. In this case, the
25 defendant did testify, and he was subject to cross-examination

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1 like any other witness. You should examine and evaluate his
2 testimony just as you would the testimony of any witness.

3 Evidence has been introduced in this case regarding
4 internal compliance policies. These policies are not a
5 substitute for the law. Companies adopt compliance policies
6 for any number of reasons, and they impose different
7 requirements on their employees than the law imposes. My
8 instructions on the law apply to this case and not anything in
9 the compliance policies. The existence or nonexistence of such
10 policies and practices may be relevant to the defendant's state
11 of mind. But the defendant is not charged with violating
12 compliance policies. Even if you were to find that the
13 defendant or an alleged coconspirator violated a compliance
14 policy, that does not necessarily mean that there was a
15 violation of law.

16 Similarly, the defendant is not charged with failing
17 to file required SEC forms. A failure to file SEC forms, such
18 as Form 4 and Form 5, may be relevant to the defendant's state
19 of mind. However, a director's failure to file such a form
20 does not constitute insider trading, nor does such a failure
21 alone prove any element of securities fraud.

22 You heard the names of several people during the
23 course of the trial who did not appear here to testify, and one
24 or more of the attorneys may have referred to their absence. I
25 instruct you that each party had an equal opportunity or lack

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1 of opportunity to call any of these witnesses. However, the
2 government bears the burden of proof; the defendant does not.
3 Therefore, you should not draw any inferences or reach any
4 conclusions as to what these persons would have testified to
5 had they been called. Their absence should not affect your
6 judgment in any way.

7 You've heard testimony from a witness regarding his
8 opinion of the defendant's character and reputation. This
9 testimony is not to be taken by you as the witness's opinion as
10 to whether the defendant is guilty or not guilty of the charges
11 in this case. That question is for you alone to determine.
12 You should, however, consider this character and reputation
13 evidence together with all the other evidence in this case in
14 determining whether the defendant is guilty or not guilty of
15 the charged offenses.

16 If, after considering all of the evidence, including
17 testimony about the defendant's character and reputation, you
18 find that the government has not established defendant's guilt
19 as to a particular count beyond a reasonable doubt, you must
20 acquit the defendant as to that count.

21 On the other hand, if after considering all the
22 evidence, including that of a defendant's character and
23 reputation, you find that the government has established each
24 element of a count beyond a reasonable doubt, you should not
25 acquit the defendant on that count merely because you believe

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1 he has a good character or reputation.

2 You have also heard the testimony of witnesses who
3 testified under grants of immunity from this Court. What that
4 means is that the testimony of the witnesses may not be used
5 against them in any criminal case, except a prosecution for
6 perjury, giving a false statement, or otherwise failing to
7 comply with the immunity order of this Court.

8 You are instructed that the government is entitled to
9 call, as a witness, a person who has been granted immunity by
10 order of this Court and that you may convict the defendant on
11 the basis of such a witness's testimony alone, if you find the
12 testimony proves the defendant guilty beyond a reasonable
13 doubt.

14 However, the testimony of a witness who has been
15 granted immunity should be examined by you with great care.
16 You should scrutinize it closely to determine whether or not it
17 is colored in such a way as to place guilt upon the defendant
18 in order to further the witness's own interests. If, after a
19 careful examination of the witness's testimony and demeanor
20 upon the witness stand, you are satisfied that the witness told
21 the truth, you should give it such weight as you believe it
22 deserves.

23 It is no concern of yours why a witness received
24 court-ordered immunity. Your sole concern is whether the
25 witness has given truthful testimony in this trial. That is a

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1 determination entirely for you, the jury.

2 You may not draw any inference, favorable or
3 unfavorable, toward the government or the defendant from the
4 fact that any person was not named as a defendant in this case,
5 and you may not speculate as to the reasons why other people
6 are not on trial before you now. Those matters are wholly
7 outside your concern and have no bearing on your function as
8 jurors in deciding the case before you.

9 You've heard testimony about evidence obtained after
10 lawful searches of defendant's phone and electronic accounts,
11 such as iCloud and Google accounts, pursuant to a search
12 warrant signed by a judge. This evidence was properly admitted
13 in this case and may be properly considered by you. Whether
14 you approve or disapprove of how this evidence was obtained
15 should not enter into your deliberations because I now instruct
16 you that the government's use of this evidence is entirely
17 lawful.

18 You must, therefore, regardless of your personal
19 opinions, give this evidence full consideration along with all
20 the other evidence in the case in determining whether the
21 government has proven the defendant's guilt beyond a reasonable
22 doubt.

23 There's evidence before you in the form of charts is
24 and summaries. These exhibits purport to summarize the
25 underlying evidence that was used to prepare them, and were

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1 shown to you to make the other evidence more meaningful and to
2 aid you in considering the evidence. They are no better than
3 the documents upon which they are based, and are not themselves
4 independent evidence. Therefore, you are to give no greater
5 weight to these charts and summaries than you would give to the
6 evidence on which they are based.

7 It is for you to decide whether the charts and
8 summaries correctly present the information contained in the
9 exhibits on which they were based. You are entitled to
10 consider the charts and summaries if you find that they are of
11 assistance to you in analyzing and understanding the evidence.

12 You have heard reference to the fact that certain
13 investigative techniques were not used by law enforcement
14 authorities. There is no legal requirement that the government
15 prove its case through any particular means. Although you are
16 to carefully consider the evidence adduced by the government,
17 you are not to speculate as to why they used the techniques
18 they did or why they did not use other techniques. The
19 government is not on trial, and law enforcement techniques are
20 not your concern. Your concern is to determine whether, on the
21 evidence or lack of evidence, a defendant's guilt has been
22 proven beyond a reasonable doubt.

23 Your function now is to weigh the evidence in this
24 case and to determine if the government has sustained its
25 burden of proof with respect to each count of the indictment.

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1 You must base your verdict solely on the evidence, and
2 these instructions as to the law, and you are obliged under
3 your oath as jurors to follow the law as I've instructed you,
4 whether you agree or disagree with the particular law in
5 question.

6 The verdict must represent the considered judgment of
7 each juror. In order to return a verdict, it is necessary that
8 each juror agree to it. Your verdict must be unanimous.

9 Let me also remind you that you took an oath to decide
10 this case impartially, fairly, without prejudice or sympathy,
11 and without fear, solely based on the evidence in the case and
12 the applicable law.

13 You have been chosen to try issues of fact and to
14 reach a verdict on the basis of the evidence or lack of
15 evidence. Both sides are entitled to a fair trial. You are to
16 make a fair and impartial decision so that you come to a just
17 verdict.

18 VII. Instructions Regarding Deliberations.

19 You are about to go into the jury room and begin your
20 deliberations. A list of exhibits that were received into
21 evidence will be provided to you in the jury room. If you want
22 any of the testimony read back to you, you may also request
23 that. If you want to see an exhibit or if you want testimony
24 read back to you, please try to be as specific as you possibly
25 can so that we can identify the correct exhibit and because, in

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1 the case of testimony, the court reporter will have to look
2 through the transcript, and the parties will have to agree on
3 what portions of testimony may be called for in response to
4 your request, and if they disagree, I must resolve those
5 disagreements. If you have any questions regarding my
6 instructions to you, you should also send me a note.

7 Your requests for exhibits or testimony – in fact any
8 communications with the Court – should be made to me in
9 writing, signed by your foreperson, and given to one of the
10 marshals or the court security officer. In any event, do not
11 tell me or anyone else how the jury stands on any issue until
12 after a unanimous verdict is reached.

13 If any of you took notes during the course of the
14 trial, you should not show your notes to, or discuss your notes
15 with, any other jurors during your deliberations. Any notes
16 you have taken are to be used solely to assist you. The fact
17 that a particular juror has taken notes entitles that juror's
18 views to no greater weight than those of any other juror.
19 Finally, your notes are not to substitute for your recollection
20 of the evidence in the case. If, during your deliberations,
21 you have any doubt as to any of the testimony, you may – as I
22 just told you – request that the official trial transcript that
23 has been made of these proceedings be read back to you.

24 You will now retire to decide the case. Your function
25 is to weigh the evidence in this case and to determine whether

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1 the government has proven the guilt of the defendant with
2 respect to each count charged in the indictment.

3 It is your duty as jurors to consult with one another
4 and to deliberate with a view to reaching an agreement. Each
5 of you must decide the case for himself or herself, but you
6 should do so only after a consideration of the case with your
7 fellow jurors, and you should not hesitate to change an opinion
8 when convinced that it is erroneous. Discuss and weigh your
9 respective opinions dispassionately, without regard to
10 sympathy, without regard to prejudice or favor for either
11 party, and follow my instructions on the law.

12 When you are deliberating, all twelve jurors must be
13 present in the jury room. A jury of fewer than twelve jurors
14 is just an assemblage of persons; it is not a jury. If a juror
15 is absent, you must stop deliberations.

16 Again, your verdict must be unanimous, but you are not
17 bound to surrender your honest convictions concerning the
18 effect or weight of the evidence for the mere purpose of
19 returning a verdict or solely because of the opinion of other
20 jurors. Each of you must make your own decision about the
21 proper outcome of this case based on your consideration of the
22 evidence and your discussions with your fellow jurors. No
23 juror should surrender his or her conscientious beliefs for the
24 purpose of returning a unanimous verdict.

25 Remember at all times that you are not partisans. You

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1 are judges – judges of the facts. Your sole interest is to
2 seek the truth from the evidence in the case.

3 If you are divided, do not report how the vote stands.
4 If you reach a verdict, do not report what it is until you are
5 asked in open court.

6 I have prepared a verdict form for you to use in
7 guiding your deliberations and recording your decision. Please
8 use that form to report your verdict.

9 The first thing you should do when you retire to
10 deliberate is to take a vote to select one of you to sit as
11 your foreperson, and then send out a note indicating whom you
12 have chosen.

13 The foreperson doesn't have any more power or
14 authority than any other juror, and his or her vote or opinion
15 doesn't count for any more than any other juror's vote or
16 opinion. The foreperson is merely your spokesperson to the
17 Court. He or she will send out any notes, and when the jury
18 has reached a verdict, he or she will notify the marshal or
19 court security officer that the jury has reached a verdict, and
20 you will come into open court and give the verdict.

21 After you have reached a verdict, your foreperson will
22 fill in and date the form that has been given to you. All
23 jurors must sign the form reflecting each juror's agreement
24 with the verdict. The foreperson should then advise the
25 marshal or court security officer outside your door that you

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1 are ready to return to the courtroom.

2 I will stress that each of you must be in agreement
3 with the verdict which is announced in court. Once your
4 verdict is announced by your foreperson in open court and
5 officially recorded, it cannot ordinarily be revoked.

6 In a moment, the first twelve jurors will begin
7 deliberation in the case. The final two who are alternates
8 won't deliberate at this time. Nevertheless, the alternate
9 jurors are not quite excused. While the jury conducts its
10 deliberations, you do not have to be in court, but you should
11 give Mr. Fishman phone numbers where you can be reached because
12 it is possible that one or both of you could be needed to
13 deliberate if a juror is unable to continue. Mr. Fishman will
14 then call you when deliberations are completed so that you will
15 know that you are completely finished.

16 Between now and then, you must continue to observe all
17 the restrictions I've instructed you on throughout the trial.
18 That is, you must not discuss the case with anyone, including
19 your fellow alternate jurors, the other jurors, other people
20 involved in the trial, members of your family, friends,
21 coworkers, or anyone else. And until a verdict is reached, as
22 I've already instructed, you may not communicate with anyone
23 about the case in any way. If anyone approaches you and tries
24 to talk to you about the case, please report that to me,
25 through Mr. Fishman, immediately.

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1 Do not listen to or watch or read any news reports
2 concerning this trial if there were to be any; do not do any
3 research on the internet or otherwise. The reason for this of
4 course is that should you be asked to participate in reaching a
5 verdict in this case, the only information you will be allowed
6 to consider is what you've learned in this courtroom during the
7 trial. Please accept my heartfelt gratitude for your service.

8 I'm sorry that you will likely miss the experience of
9 deliberating with the jury, but the law provides for a jury of
10 twelve persons in this case.

11 Let me see the parties at sidebar briefly.

12 (At the sidebar)

13 I'm about to excuse the alternates and then swear the
14 jury.

15 All of the exceptions that have been made to date are
16 preserved. Any exceptions by the defense to whatever end?

17 MS. SHAPIRO: No additional ones. Thank you.

18 MS. HANFT: No, your Honor. Nothing from the
19 government.

20 (In open court)

21 THE COURT: I'm going to ask the last two jurors,
22 jurors No. 13 and 14 before the rest of the jury retires to the
23 jury room, if you have any clothing or objects there, to please
24 go pick them up and to withdraw without discussing the case.
25 you may also say goodbyes to your fellow jurors. You may do so

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1 in a moment.

2 Do we have the court security officer?

3 Mr. Fishman, would you please swear the court security
4 officer.

5 (Marshal sworn)

6 Members of the jury, in conclusion, I am sure that if
7 you listen to the views of your fellow jurors and if you apply
8 your own common sense, you will reach a fair verdict here.

9 You are now invited to retire to the jury room to
10 begin to deliberate.

11 (At 4:30 p.m., the jury retired to deliberate)

12 Just a couple of things. First of all, I'd like to
13 congratulate both sides on a case very well tried. Please make
14 sure that Mr. Fishman has contact information for all of you.
15 You're also invited to look at what Mr. Fishman sends into the
16 jury room in terms of the exhibit list, the verdict form, and
17 the trial indictment.

18 It's my practice, unless there is an objection, should
19 the jury return a verdict of not guilty on all of the counts,
20 for me to meet with the jurors and just ask them about their
21 experience. It's also my practice that if the jury returns a
22 verdict of guilty on any count, not to meet with the jurors.
23 If anybody has an objection to me meeting with the jurors in
24 the context in which I said I would, you should let me know.

25 Finally, before I ask whether you have anything for

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1 me, I know that you are all experienced trial lawyers. It
2 sometimes is the case that participants in a trial ask to meet
3 with the judge for comments and advice on their performance.
4 I'm happy to do so. I'm also fine if nobody wants my advice.
5 I won't do it if anybody objects. So you'll let me know.

6 Anything from the government?

7 MR. NESSIM: No, your Honor. Thank you.

8 THE COURT: Mr. Bach.

9 MR. BACH: No. Thank you, Judge.

10 THE COURT: Try to stay around here because I expect
11 that we'll get a note soon of who the foreperson is.

12 (Recess)

13 We've got a foreperson. Court Exhibit 1 was received
14 at 4:40 today.

15 It reads as follows: "Magdalena Majcher-Tascio is the
16 foreperson." The note was from 4:39 p.m. I think that's juror
17 No. 2, is my recollection.

18 Parties can inspect the note if they want.

19 MR. NESSIM: Your Honor, just in terms of the schedule
20 for us for the day tomorrow morning, how long will the jury
21 deliberate?

22 THE COURT: They'll stay as long as they want to. I
23 don't think they've given us an indication yet as to how long
24 they want to. We'll let you know when they would like to leave
25 as soon as we know it. My expectation is that they'll want to

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1 start at 9 o'clock, but if they let us know they want to start
2 earlier than 9:00 or a little bit later than 9:00, we'll
3 accommodate them.

4 MR. NESSIM: If they want to leave at some point today
5 and when they come back tomorrow, is it the Court's practice to
6 convene the parties and the jurors when they're dismissed and
7 when they come in in the morning?

8 THE COURT: No, not unless there's a request that I do
9 that. The jury just leaves when they are ready to leave unless
10 there's an occasion for me to meet with you. I don't think
11 there's a reason for me to do so.

12 MR. NESSIM: No request from the government on that.

13 THE COURT: From you, Mr. Bach?

14 MR. BACH: No. We'll give our phone numbers and I'm
15 sure we'll be in the building.

16 THE COURT: I'll see you when we get the next note.

17 (Continued on next page)

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1 (Jury not present, 5:37 p.m.)

2 THE COURT: All right. The jury has left for the
3 evening to return at 9 a.m., but they did send a note. It's
4 marked as Court Exhibit No. 2. Time stamp from the jury is
5 5:20, received at 5:30. It asks for the following: Government
6 Exhibit 750, requesting cross-examination of Bruce Garelick
7 testimony, GX 465, GX 965, GX 751, and then it looks like
8 Government Exhibit 122.

9 So the parties are free to examine it. And I guess
10 I'll hear from the parties, in terms of the cross-examination,
11 whether it's sufficient for the parties to agree on the
12 portions of the transcript to go back to the jury or whether we
13 need to have the jury come back in and just have the court
14 reporter read the entire transcript. It's my preference for
15 the transcript to go back to them. But does the government
16 have a view? Mr. Bach, do you have a view?

17 MR. NESSIM: The government's fine with the transcript
18 going back to the jury, with the parties' agreement on the
19 section.

20 THE COURT: Mr. Bach?

21 MR. BACH: Fine with us.

22 THE COURT: Okay. So it means that you all are not
23 quite done for the evening. Why don't you figure out what
24 should go back to the jury before you leave tonight and then
25 make sure that my deputy knows what it is so that when the jury

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1 comes in at 9:00, they can be given it. But I think this is
2 the last time you will see me tonight, unless anybody needs me
3 for anything. From the government?

4 MR. NESSIM: For the exhibits that are going back, I
5 assume those should be paper copies unless they're very
6 voluminous.

7 THE COURT: Yeah. I don't know what these exhibits
8 are. Are any of them extremely voluminous?

9 MR. NESSIM: I don't—122 may be an S-1. I'm not
10 sure. But otherwise I don't think that they're—

11 THE COURT: I think paper copies should go back to
12 them.

13 MR. NESSIM: Okay.

14 THE COURT: Mr. Bach, anything?

15 MR. BACH: No, that's fine. Thank you. Nothing
16 further.

17 THE COURT: Okay. The note is here for your
18 inspection. Thank you.

19 THE DEPUTY CLERK: All rise.

20 (Adjourned to May 9, 2024, at 9:00 a.m.)
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